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CALIFORNIA COASTAL COMMISSION
SOUTH CENTRAL COAST AREA
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Staff:	LF-V
Staff Report:	2/16/06
Hearing Date:	3/07/06
Commission Action:	

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-05-069

APPLICANT: Jan and Jenny Dodds

PROJECT LOCATION: 2161 Encinal Canyon Road, Santa Monica Mountains (Los Angeles Co.)

APN NO.: 4472-027-005

PROJECT DESCRIPTION: Construction of a one story, 2,174 sq. ft. single family residence, 825 sq. ft. detached three-car garage, driveway, turnaround, septic system, water tank, and approximately 5200 cu. yds. of grading (4,660 cu. yds. cut, 540 cu. yds. fill). The proposed project also includes a request for after-the-fact approval of an existing water well.

Lot area	1.55 acres
Building coverage	2,999 sq. ft.
Pavement coverage	500 sq. ft.
Landscape coverage	60,340 sq. ft.
Height Above Finished Grade	17 feet
Parking spaces	3

LOCAL APPROVALS RECEIVED: County of Los Angeles Department of Regional Planning, Approval in Concept, November 1, 2004; County of Los Angeles Environmental Health Services, Sewage Disposal System Design Approval, May 16, 2005; County of Los Angeles Fire Department, Final Fuel Modification Plan Approval, June 9, 2005; County of Los Angeles Fire Department, Fire Prevention Engineering Approval, May 26, 2005.

STAFF NOTE

This application was filed on July 15, 2005. Under the provisions of the Permit Streamlining Act, the latest possible date for Commission action is April 11, 2006. As such, the Commission must act on Application 4-05-069 at the March 2006 Hearing.

SUBSTANTIVE FILE DOCUMENTS: "Preliminary Geologic and Soils Engineering Investigation," Subsurface Designs, Inc., January 16, 2003.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends ***APPROVAL*** of the proposed project with ***FOURTEEN (14) SPECIAL CONDITIONS*** regarding (1) geologic recommendations, (2) drainage and polluted runoff control, (3) landscaping and erosion control plans, (4) wildfire waiver of liability, (5) structural appearance, (6) future development, (7) lighting restriction, (8) deed restriction, (9) habitat impact mitigation, (10) removal of excess excavated material, (11) removal of natural vegetation, (12) revised plans, (13) removal of unpermitted development, and (14) condition compliance.

The standard of review for the proposed project is the Chapter Three policies of the Coastal Act. In addition, the policies of the certified Malibu – Santa Monica Mountains Land Use Plan (LUP) serve as guidance. As conditioned, the proposed project is consistent with all applicable Chapter Three policies of the Coastal Act.

I. STAFF RECOMMENDATION

MOTION: ***I move that the Commission approve Coastal Development Permit No. 4-05-069 pursuant to the staff recommendation.***

Staff Recommendation of Approval:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve the Permit:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.

2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic report ("Preliminary Geologic and Soils Engineering Investigation," Subsurface Designs, Inc., January 16, 2003). These recommendations, including those concerning foundations, grading, erosion control, sewage disposal, and drainage, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, grading, sewage disposal, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Drainage and Polluted Runoff Control Plans

Prior to the Issuance of the Coastal Development Permit, the applicant shall submit to the Executive Director for review and written approval, two sets of final drainage and runoff control plans, including supporting calculations. The plan shall be prepared by a licensed engineer and shall incorporate structural and non-structural Best Management Practices (BMPs) designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. The plan shall be reviewed and approved by the consulting engineering geologist to ensure the plan

is in conformance with geologist's recommendations. In addition to the specifications above, the plan shall be in substantial conformance with the following requirements:

(a) Selected BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour runoff event for volume-based BMPs, and/or the 85th percentile, 1-hour runoff event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.

(b) Runoff shall be conveyed off site in a non-erosive manner.

(c) Energy dissipating measures shall be installed at the terminus of outflow drains.

(d) The plan shall include provisions for maintaining the drainage system, including structural BMPs, in a functional condition throughout the life of the approved development. Such maintenance shall include the following: (1) BMPs shall be inspected, cleaned and repaired when necessary prior to the onset of the storm season, no later than September 30th each year and (2) should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the applicant/landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the applicant shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.

3. Landscaping and Erosion Control Plans

Prior to issuance of a coastal development permit, the applicants shall submit two sets of landscaping and erosion control plans, prepared by a licensed landscape architect or a qualified resource specialist, for review and approval by the Executive Director. The plans shall identify the species, extent, and location of all plant materials and shall incorporate the following criteria:

A. Landscaping Plan

1) All graded & disturbed areas on the subject site shall be planted and maintained for erosion control purposes within (60) days of receipt of the certificate of occupancy for the residence. To minimize the need for irrigation all landscaping shall consist primarily of native/drought resistant plants as listed by the California Native Plant Society, Santa Monica Mountains Chapter, in their document entitled Recommended List of Plants for Landscaping in the Santa Monica Mountains, dated February 5, 1996. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.

2) All cut and fill slopes shall be stabilized with planting at the completion of final grading. Planting should be of native plant species indigenous to the Santa Monica Mountains using accepted planting procedures, consistent with fire safety requirements. Such

planting shall be adequate to provide 90 percent coverage within two (2) years, and this requirement shall apply to all disturbed soils;

3) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;

4) The Permittee shall undertake development in accordance with the final approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Coastal Commission - approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

5) Vegetation within 20 feet of the proposed house may be removed to mineral earth, vegetation within a 200-foot radius of the main structure may be selectively thinned in order to reduce fire hazard. However, such thinning shall only occur in accordance with an approved long-term fuel modification plan submitted pursuant to this special condition. The fuel modification plan shall include details regarding the types, sizes and location of plant materials to be removed, and how often thinning is to occur. In addition, the applicant shall submit evidence that the fuel modification plan has been reviewed and approved by the Forestry Department of Los Angeles County. Irrigated lawn, turf and ground cover planted within the twenty foot radius of the proposed house shall be selected from the most drought tolerant species or subspecies, or varieties suited to the Mediterranean climate of the Santa Monica Mountains.

6) Rodenticides containing any anticoagulant compounds (including, but not limited to, Warfarin, Brodifacoum, Bromadiolone or Diphacinone) shall not be used.

7) The property shall be planted with native species of sufficient height and density to screen the proposed development from public viewing areas along Encinal Canyon Road and the adjacent Three Park Lateral Trail and Trancas Canyon Trail.

B. Interim Erosion Control Plan

(1) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include any temporary access roads, staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.

(2) The plan shall specify that should grading take place during the rainy season (November 1 – March 31) the applicant shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained through out the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

(3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

C. Monitoring

Five (5) years from the date of completion of the proposed development, the applicant shall submit for the review and approval of the Executive Director a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that assesses the on-site landscaping and certifies whether it is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to these permits, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The supplemental landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the remedial measures specified in the approved supplemental landscape plan.

4. Wildfire Waiver of Liability

By acceptance of this permit, the applicant agrees to indemnify and hold harmless the California Coastal Commission, its officers, agents, and employees against any and all claims, demands, damages, costs, and expenses of liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project in an area where an extraordinary potential for damage or destruction from wildfire exists as an inherent risk to life and property.

5. Structural Appearance

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a color palette and material specifications for the outer surface of all structures authorized by the approval of Coastal Development Permit No. 4-05-069. The palette samples shall be presented in a format not to exceed 8½" x 11" x ½" in size. The palette shall include the colors proposed for the roof, trim, exterior surfaces, driveways, retaining walls, or other structures authorized by this permit. Acceptable colors shall be limited to colors compatible with the surrounding environment (earth tones) including shades of green, brown and gray with no white or light shades and no bright tones. All windows shall be comprised of non-glare glass.

The approved structures shall be colored with only the colors and window materials authorized pursuant to this special condition. Alternative colors or materials for future repainting or resurfacing or new windows may only be applied to the structures authorized by Coastal Development Permit No. 4-05-069 if such changes are specifically authorized by the Executive Director as complying with this special condition.

6. Future Development

This permit is only for the development described in Coastal Development Permit No. 4-05-069. Pursuant to Title 14 California Code of Regulations §13250(b)(6) and 13253(b)(6), the exemptions otherwise provided in Public Resources Code §30610(a) and (b) shall not apply to the entire parcel. Accordingly, any future improvements to the entire property, including but not limited to the residence, garage (including conversion of the structure to habitable space), driveway, access road, and clearing of vegetation or grading other than as provided for in the approved fuel modification/landscape plan prepared pursuant to Special Condition Three (3), shall require an amendment to Coastal Development Permit No. 4-05-069 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

7. Lighting Restriction

A. The only outdoor night lighting allowed on the subject parcel is limited to the following:

(1) The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.

(2) Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

(3) The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60 watt incandescent bulb.

B. No lighting around the perimeter of the site and no lighting for aesthetic purposes is allowed.

8. Deed Restriction

Prior to issuance of the coastal development permit, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and

content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Habitat impact Mitigation

Prior to the issuance of the coastal development permit, the applicant shall submit for the review and approval of the Executive Director, a map delineating all areas of chaparral habitat (ESHA), that will be disturbed by the proposed development, including fuel modification and brush clearance requirements on the project site and adjacent property. The chaparral ESHA areas on the site and adjacent property shall be delineated on a detailed map, to scale, illustrating the subject parcel boundaries and adjacent parcel boundaries if the fuel modification/brush clearance zones extend onto adjacent property. The delineation map shall indicate the total acreage for all chaparral ESHA both on and offsite, that will be impacted by the proposed development, including the fuel modification/brush clearance areas. A 200-foot clearance zone from the proposed structures shall be used to determine the extent of off-site brush clearance for fire protection purposes. The delineation shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains.

Mitigation shall be provided for impacts to the chaparral ESHA from the proposed development and fuel modification requirements by one of the three following habitat mitigation methods:

A. Habitat Restoration

1) Habitat Restoration Plan

Prior to the issuance of the coastal development permit, the applicant shall submit a habitat restoration plan, for the review and approval of the Executive Director, for an area of degraded chaparral habitat equivalent to the area of chaparral ESHA impacted by the proposed development and fuel modification area. The habitat restoration area may either be onsite or offsite within the coastal zone in the City of Malibu or in the Santa Monica Mountains. The habitat restoration area shall be delineated on a detailed site plan, to scale, that illustrates the parcel boundaries and topographic contours of the site. The habitat restoration plan shall be prepared by a qualified resource specialist or biologist familiar with the ecology of the Santa Monica Mountains, and shall be designed to restore the area in question for habitat function, species diversity and vegetation cover. The restoration plan shall include a statement of goals and performance standards, revegetation and restoration methodology, and maintenance and monitoring provisions. If the restoration site is offsite the applicant shall submit written evidence to the Executive Director that the property owner agrees to the restoration work, maintenance and monitoring required by this condition and agrees not to disturb any native vegetation in the restoration area.

The applicant shall submit, on an annual basis for five years, a written report, for the review and approval of the Executive Director, prepared by a qualified resource specialist, evaluating compliance with the performance standards outlined in the restoration plan and describing the revegetation, maintenance and monitoring that was conducted during the prior year. The annual report shall include recommendations for mid-course corrective measures. At the end of the five-year period, a final detailed report shall be submitted for the review and approval of the Executive Director. If this report indicates that the restoration project has been in part, or in whole, unsuccessful, based on the approved goals and performance standards, the applicant shall submit a revised or supplemental restoration plan with maintenance and monitoring provisions, for the review and approval of the Executive Director, to compensate for those portions of the original restoration plan that were not successful. A report shall be submitted evaluating whether the supplemental restoration plan has achieved compliance with the goals and performance standards for the restoration area. If the goals and performance standards are not met within 10 years, the applicant shall submit an amendment to the coastal development permit for an alternative mitigation program.

The habitat restoration plan shall be implemented prior to occupancy of the residence.

2) Open Space Deed Restriction

No development, as defined in section 30106 of the Coastal Act shall occur in the habitat restoration area, as shown on the habitat restoration site plan, required pursuant to (A)(1) above.

Prior to the issuance of the coastal development permit, the owner of the habitat restoration area shall execute and record a deed restriction in a form and content acceptable to the Executive Director, reflecting the above restriction on development and designating the habitat restoration area as open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of both the parcel and the open space area/habitat restoration area. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction. This deed restriction shall not be removed or changed without a Commission amendment to this coastal development permit.

3) Performance Bond

Prior to the issuance of the permit, the applicant shall post performance bonds to guarantee implementation of the restoration plan as follows: a) one equal to the value of the labor and materials; and b) one equal to the value of the maintenance and monitoring for a period of 5 years. Each performance bond shall be released upon satisfactory completion of items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the Coastal Commission may collect the security and complete the work on the property.

B. Habitat Conservation

Prior to issuance of the coastal development permit, the applicant shall execute and record an open space deed restriction in a form and content acceptable to the Executive Director, over a parcel or parcels containing chaparral ESHA. The chaparral ESHA located on the mitigation

parcel or parcels must be of equal or greater area than the ESHA area impacted by the proposed development, including the fuel modification/brush clearance areas. No development, as defined in section 30106 of the Coastal Act, shall occur on the mitigation parcel(s) and the parcel(s) shall be preserved as permanent open space. The deed restriction shall include a graphic depiction and narrative legal descriptions of the parcel or parcels. The deed restriction shall run with the land, binding all successors and assigns, and shall be recorded free of prior liens that the Executive Director determines may affect the enforceability of the restriction.

Prior to occupancy of the residence the applicant shall submit evidence, for the review and approval of the Executive Director, that the recorded documents have been reflected in the Los Angeles County Tax Assessor Records.

If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage may be used to provide habitat impact mitigation for other development projects that impact like ESHA.

C. Habitat Impact Mitigation Fund

Prior to the issuance of the coastal development permit, the applicant the applicant shall submit evidence, for the review and approval of the Executive Director, that compensatory mitigation, in the form of an in-lieu fee, has been paid to the Mountains Recreation and Conservation Authority to mitigate adverse impacts to chaparral habitat ESHA. The fee shall be calculated as follows:

1) Development Area, Irrigated Fuel Modification Zones

The in-lieu fee for these areas shall be $12,000 per acre within the development area and any required irrigated fuel modification zones. The total acreage shall be based on the map delineating these areas required by this condition.

2) Non-irrigated Fuel Modification Zones

The in-lieu fee for non-irrigated fuel modification areas shall be $3,000 per acre. The total acreage shall be based on the map delineating these areas required by this condition.

Prior to the payment of any in-lieu fee to the Mountains Recreation and Conservation Authority, the applicant shall submit, for the review and approval of the Executive Director, the calculation of the in-lieu fee required to mitigate adverse impacts to chaparral habitat ESHA, in accordance with this condition. After review and approval of the fee calculation, the fee shall be paid to the Mountains Recreation and Conservation Authority. The fee shall be used for the acquisition, permanent preservation or restoration of chaparral habitat in the Santa Monica Mountains coastal zone. The fee may not be used to restore areas where development occurred in violation of the Coastal Act's permit requirements.

10. Removal of Excess Excavated Material

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess excavated material from the site. If the disposal site is located in the Coastal Zone, the disposal site must have a valid

coastal development permit for the disposal of fill material. If the disposal site does not have a coastal permit, such a permit will be required prior to the disposal of the material.

11. Removal of Natural Vegetation

Removal of natural vegetation for the purpose of fuel modification for the development approved pursuant to these permits shall not commence until the local government has issued a building or grading permit(s) for the development approved pursuant to Coastal Development Permit No. 4-05-069.

12. Revised Plans

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, revised plans reducing the proposed development area to no greater than 10,000 square feet. The development area shall include any graded slopes, but may exclude the proposed access driveway and turnaround.

13. Removal of Unpermitted Development

The applicants shall remove the unpermitted abandoned vehicles, appliances, and other discarded items located on the subject site within 90 days of the issuance of this permit. The Executive Director may grant additional time for good cause.

14. Condition Compliance

Within one hundred and eighty (180) days of Commission action on this coastal development permit application, or within such additional time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

The applicants propose to construct a one story, 2,174 sq. ft. single family residence, 825 sq. ft. detached three-car garage, driveway, turnaround, septic system, water tank, and approximately 5200 cu. yds. of grading (4,660 cu. yds. cut, 540 cu. yds. fill) The proposed project also includes a request for after-the-fact approval of an existing water well. **(Exhibits 3 - 11)**.

The project site is a vacant 1.55 acre parcel located immediately west of Encinal Canyon Road in the Santa Monica Mountains area **(Exhibits 1 & 2)**. The site is surrounded by undeveloped hillside, although scattered custom single family residences are located approximately ½ mile north, west, and southwest of the project site **(Exhibit 13)**. In addition, a single family residence was approved immediately south of the project site, but has not yet been constructed [CDP No. 4-00-236 (Barney)]. The subject parcel consists of a portion of a steeply sloping knoll, with elevations ranging between 1475 and 1530 feet above mean sea level, and grades from 1.5:1 to 3:1. The subject parcel is located immediately east of Lulu Carr Road, an existing dirt road, and two proposed trails: the proposed National Park Service Three Park Lateral Trail, and the proposed Los Angeles County Department of Parks and Recreation Trancas Canyon Trail, the latter of which was into the 1986 certified Malibu-Santa Monica Mountains Land Use Plan (LUP) **(Exhibit 2a)**.

The subject site is located within a large, contiguous area of chaparral vegetation punctuated with oak woodland and riparian vegetation in drainages and canyon bottoms. Portions of the subject property, however, have been disturbed by previous clearing and grading of an access driveway and small pad, without benefit of a coastal development permit. These areas contain ruderal vegetation as well as native chaparral species. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The unpermitted development is located within the area of the proposed development and associated fuel modification. Review of historical aerial photographs of the site by staff indicates that the clearance and grading occurred sometime between 1977 and 1986 and that the project site contained undisturbed chaparral vegetation as of the January 1, 1977 effective date of the Coastal Act. In determining the extent of ESHA, the Commission must consider the condition of the subject site prior to any unpermitted development. Prior to the unpermitted clearance and grading, the entire site contained undisturbed chaparral vegetation, contiguous with a large area of contiguous chaparral habitat that still exists. Thus, the entire site is considered environmentally sensitive habitat **(Exhibit 12)**.

The project site is located in a scenic area and will be visible from various public viewpoints, including along Encinal Canyon Road and the proposed Three Park Lateral Trail and Trancas Canyon Trail **(Exhibit 14)**.

B. GEOLOGY AND HAZARDS

The proposed development is located in the Santa Monica Mountains area, an area that is generally considered to be subject to an unusually high amount of natural hazards. Geologic hazards common to the Santa Monica Mountains area include landslides, erosion, and flooding. In addition, fire is an inherent threat to the indigenous chaparral community of the coastal mountains. Wild fires often denude hillsides in the Santa Monica Mountains of all existing vegetation, thereby contributing to an increased potential for erosion and landslides on property.

Section 30253 of the Coastal Act states in pertinent part that new development shall:

> ***(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
>
> ***(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, instability, or destruction of the site or surrounding***

> ***area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act mandates that new development be sited and designed to provide geologic stability and structural integrity, and minimize risks to life and property in areas of high geologic, flood, and fire hazard.

Geology

The applicant has submitted a geologic report ("Preliminary Geologic and Soils Engineering Investigation," Subsurface Designs, Inc., January 16, 2003) that evaluates the geologic stability of the subject site in relation to the proposed development. Based on their evaluation of the site's geology and the proposed development, the consultants have found that the project site is suitable for the proposed project. The project's geotechnical consultants state in their report:

> ***It is the finding of this firm, based upon the subsurface data, that the proposed residence and grading will not be affected by settlement, landsliding, or slippage. Further, the aforementioned development and grading will not have an adverse effect on off-site property.***

The geotechnical engineering consultants conclude that the proposed development is feasible and will be free from geologic hazard provided their recommendations are incorporated into the proposed development. The submitted geologic reports contain several recommendations to be incorporated into project construction, erosion control, grading, foundations, and drainage to ensure the stability and geologic safety of the proposed project site and adjacent property. To ensure that the recommendations of the consultants have been incorporated into all proposed development, the Commission, as specified in **Special Condition One (1)**, requires the applicant to comply with and incorporate the recommendations contained in the submitted geologic reports into all final design and construction, and to obtain the approval of the geotechnical consultants prior to commencement of construction. Final plans approved by the consultants shall be in substantial conformance with the plans approved by the Commission. Any substantial changes to the proposed development, as approved by the Commission, which may be recommended by the consultant shall require an amendment to the permit or a new coastal development permit.

The Commission finds that controlling and diverting run-off in a non-erosive manner from the proposed structures, impervious surfaces, and building pad will also add to the geologic stability of the project site. Therefore, in order to minimize erosion and ensure stability of the project site, and to ensure that adequate drainage and erosion control is included in the proposed development, the Commission requires the applicants to submit drainage and erosion control plans certified by the geotechnical engineer, as specified in **Special Conditions Two (2)** and **Three (3)**.

Further, the Commission finds that landscaping of graded and disturbed areas on the subject site will serve to stabilize disturbed soils, reduce erosion and thus enhance and maintain the geologic stability of the site. Therefore, **Special Condition Three (3)** requires the applicant to submit landscaping plans for the project site. **Special Condition Three (3)** also requires the applicant to utilize and maintain native and noninvasive plant species compatible with the surrounding area for landscaping the project site.

Invasive and non-native plant species are generally characterized as having a shallow root structure in comparison with their high surface/foliage weight. The Commission notes that non-native and invasive plant species with high surface/foliage weight and shallow root structures do not serve to stabilize slopes and that such vegetation results in potential adverse effects to the stability of the project site. Native species, alternatively, tend to have a deeper root structure than non-native and invasive species, and once established aid in preventing erosion. Therefore, the Commission finds that in order to ensure site stability, all slopes and disturbed and graded areas of the site shall be landscaped with appropriate native plant species, as specified in **Special Condition Three (3)**.

In addition, the applicants propose 5,200 cu. yds. of grading, which includes 4,660 cu. yds. of cut and 540 cu. yds. of fill. This grading proposal will result in 4,120 cu. yds of excess cut material. In order to ensure that the excess excavated material is moved off site so as not to contribute to unnecessary landform alteration and to minimize erosion and sedimentation from stockpiled excavated soil, the Commission finds it necessary to require the applicant to dispose of the material at a appropriate disposal site or to a site that has been approved to accept fill material, as specified in **Special Condition Ten (10).**

Furthermore, in order to ensure that vegetation clearance for fire protection purposes does not occur prior to commencement of grading or construction of the proposed structures, the Commission finds that it is necessary to impose a restriction on the removal of natural vegetation as specified in **Special Condition Eleven (11)**. This restriction specifies that natural vegetation shall not be removed until grading or building permits have been secured and construction of the permitted structures has commenced. The limitation imposed by **Special Condition Eleven (11)** avoids loss of natural vegetative coverage resulting in unnecessary erosion in the absence of adequately constructed drainage and run-off control devices and implementation of the landscape and interim erosion control plans.

Wildfire

The proposed project is located in the Santa Monica Mountains, an area subject to an extraordinary potential for damage or destruction from wild fire. Typical vegetation in the Santa Monica Mountains consists mostly of coastal sage scrub and chaparral. Many plant species common to these communities produce and store terpenes, which are highly flammable substances (Mooney in Barbour, *Terrestrial Vegetation of California*, 1988). Chaparral and sage scrub communities have evolved in concert with, and continue to produce the potential for, frequent wild fires. The typical warm, dry summer conditions of the Mediterranean climate combine with the natural characteristics of the native vegetation to pose a risk of wild fire damage to development that cannot be completely avoided or mitigated.

Due to the fact that the proposed project is located in an area subject to an extraordinary potential for damage or destruction from wild fire, the Commission can only approve the project if the applicant assumes the liability from these associated risks. Through **Special Condition Five (5)**, the wildfire waiver of liability, the applicant acknowledges the nature of the fire hazard which exists on the site and which may affect the safety of the proposed development. Moreover, through acceptance of **Special Condition Five (5)**, the applicant also agrees to indemnify the Commission, its officers, agents and employees against any and all expenses or liability arising out of the acquisition, design, construction, operation, maintenance, existence, or failure of the permitted project.

Finally, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that, as conditioned, the proposed project is consistent with §30253 of the Coastal Act.

C. WATER QUALITY

The Commission recognizes that new development in the Santa Monica Mountains has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, and introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources, as well as effluent from septic systems. Section 30231 of the Coastal Act states:

> ***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, minimizing alteration of natural streams.***

The project site is a vacant parcel located on a knoll overlooking both the La Chusa Canyon and Encinal Canyon watersheds. The proposed development will result in an increase in impervious surfaces, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants to coastal waters can cause cumulative impacts such as: eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes and reduce optimum populations of marine organisms and have adverse impacts on human health.

Therefore, in order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission finds it necessary to require the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent

Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs to accommodate (infiltrate, filter or treat) the runoff from the more frequent storms, rather than for the largest infrequent storms, results in improved BMP performance

The American Society of Civil Engineers (ASCE) and the Water Environment Federation (WEF) have recommended a numerical BMP design standard for storm water that is derived from a mathematical equation to maximize treatment of runoff volume for water quality based on rainfall/runoff statistics and which is economically sound.[1] The maximized treatment volume is cut-off at the point of diminishing returns for rainfall/runoff frequency. On the basis of this formula and rainfall/runoff statistics, the point of diminishing returns for treatment control is the 85th percentile storm event. Therefore, the Commission requires the selected post-construction structural BMPs be sized based on design criteria specified in **Special Condition Two (2)**, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources, in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction and post construction landscaping will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the Commission finds that **Special Condition Three (3)** is necessary to ensure the proposed development will not adversely impact water quality or coastal resources.

As noted above, unpermitted development has occurred on the subject site, including clearance of vegetation and grading of an access driveway and small pad. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The proposed development, including required fuel modification, encompasses the entire area of unpermitted clearance. In addition, the unpermitted graded areas will be largely included within the footprint of the proposed access driveway and turnaround. Those portions not utilized by the proposed driveway and turnaround will be located within Zone B of the required fuel modification plan and therefore will be planted with primarily native vegetation pursuant to **Special Condition Three (3),** as discussed below. Therefore, the unpermitted grading and clearance, in the context of the proposed project, will not have significant impacts on water quality.

The proposed project includes removal of the unpermitted abandoned vehicles, appliances, and other discarded items located on the property. These items constitute a potential source of pollutants, including include petroleum hydrocarbons such as oil and grease, coolants, and other harmful substances, inconsistent with Coastal Act policies to minimize adverse impacts to water quality. Therefore, in order to ensure that the applicants' proposal to remove the discarded items is implemented, **Special Condition Thirteen (13)** requires the applicants to remove the unpermitted items within 90 days of the issuance of the subject permit.

Finally, the proposed development includes the installation of an on-site private sewage disposal system to serve the residence. The applicant's environmental health specialist performed infiltration tests. The County of Los Angeles Environmental Health Department has

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[1] *Urban Runoff Quality Management*, *WEF Manual of Practice No. 23, ASCE manual and Report on Engineering Practice No. 87.* WEF, Alexandria, VA; ASCE, Reston, VA. 259 pp (1998); Urbonas, Guo, and Tucker, "Optimization of Stormwater Quality Capture Volume," in *Urban Stormwater Quality Enhancement - Source Control, Retrofitting, and Combined Sewere Technology, Proceedings of an Engineering Foundation Conference*, Harry C. Torno, ed. October 1989. New York: ASCE, pp. 94-110.

given in-concept approval of the proposed septic system, determining that the system meets the requirements of the plumbing code. The Commission has found that conformance with the provisions of the plumbing code is protective of resources. Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Section 30231 of the Coastal Act.

D. ENVIRONMENTALLY SENSITIVE HABITAT AREA

Section **30230** of the Coastal Act states that:

> ***Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.***

Section **30231** states:

> ***The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.***

Section **30240** states:

> ***(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.***
>
> ***(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.***

Section **30107.5** of the Coastal Act, defines an environmentally sensitive area as:

> ***"Environmentally sensitive area" means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.***

Section 30231 of the Coastal Act requires that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through, among other means, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams. In addition, Sections 30107.5 and 30240 of the Coastal Act state that environmentally sensitive habitat areas must be protected against

disruption of habitat values. Therefore, when considering any area, such as the Santa Monica Mountains, with regard to an ESHA determination one must focus on three main questions:

1) Is a habitat or species rare or especially valuable?
2) Does the habitat or species have a special nature or role in the ecosystem?
3) Is the habitat or species easily disturbed or degraded by human activities and developments?

The Coastal Commission has found that the Mediterranean Ecosystem in the Santa Mountains is itself rare, and valuable because of its relatively pristine character, physical complexity, and resultant biological diversity. Therefore, habitat areas that provide important roles in that ecosystem are especially valuable and meet the second criterion for the ESHA designation. In the Santa Monica Mountains, coastal sage scrub and chaparral have many important roles in the ecosystem, including the provision of critical linkages between riparian corridors, the provision of essential habitat for species that require several habitat types during the course of their life histories, the provision of essential habitat for local endemics, the support of rare species, and the reduction of erosion, thereby protecting the water quality of coastal streams. For these and other reasons discussed in **Exhibit 14**, which is incorporated herein, the Commission finds that large contiguous, relatively pristine stands of coastal sage scrub and chaparral in the Santa Monica Mountains meet the definition of ESHA. This is consistent with the Commission's past findings on the Malibu LCP[2].

For any specific property within the Santa Monica Mountains, it is necessary to meet three tests in order to assign the ESHA designation. First, is the habitat properly identified, for example as coastal sage scrub or chaparral? Second, is the habitat undeveloped and otherwise relatively pristine? Third, is the habitat part of a large, contiguous block of relatively pristine native vegetation?

The subject site is a 1.55-acre parcel located immediately west of Encinal Canyon Road in the Santa Monica Mountains area **(Exhibits 1 & 2)**. The site is surrounded by undeveloped hillside, although scattered custom single family residences are located approximately ½ mile north, west, and southwest of the project site. In addition, a single family residence was approved immediately south of the project site, but has not yet been constructed [CDP No. 4-00-236 (Barney)]. The subject parcel consists of a portion of a steeply sloping knoll, with elevations ranging between 1475 and 1530 feet above mean sea level, and grades from 1.5:1 to 3:1. The site overlooks Lachusa Canyon to the west and Encinal Canyon to the east. The applicants propose construction of a single family residence, access driveway, and turnaround.

The subject site is located within a large, contiguous area of chaparral vegetation punctuated with oak woodland and riparian vegetation in drainages and canyon bottoms. Portions of the subject property, however, have been disturbed by previous clearing and grading of an access driveway and small pad, without benefit of a coastal development permit. These areas contain ruderal vegetation as well as native chaparral species. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The unpermitted development is located within the area of the proposed development and associated fuel modification. Review of historical aerial photographs of the site by staff indicates that the clearance and grading occurred sometime between 1977 and 1986 and that the project site contained undisturbed chaparral vegetation as of the January 1, 1977 effective date of the Coastal Act. In determining

[2] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

the extent of ESHA, the Commission must consider the condition of the subject site prior to any unpermitted development. Prior to the unpermitted clearance and grading, the entire site contained undisturbed chaparral vegetation, contiguous with a large area of contiguous chaparral habitat that still exists. Thus, the entire site is considered environmentally sensitive habitat.

Therefore, due to the important ecosystem role of chaparral in the Santa Monica Mountains (detailed in **Exhibit 14**), and the fact that the subject site is relatively undisturbed and part of a large, unfragmented block of habitat, the Commission finds that the chaparral habitat on and surrounding the subject site meets the definition of ESHA under the Coastal Act.

As explained above, the project site and the surrounding area constitute an environmentally sensitive habitat area (ESHA) pursuant to Section 30107.5. Section 30240 requires that "environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas." Section 30240 restricts development on the parcel to only those uses that are dependent on the resource. The applicant proposes to construct a single-family residence on the parcel. As single-family residences do not have to be located within ESHAs to function, the Commission does not consider single-family residences to be a use dependent on ESHA resources. Application of Section 30240, by itself, would require denial of the project, because the project would result in significant disruption of habitat values and is not a use dependent on those sensitive habitat resources.

However, the Commission must also consider Section 30010, and the Supreme Court decision in *Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003, 112 S.Ct. 2886. Section 30010 of the Coastal Act provides that the Coastal Act shall not be construed as authorizing the Commission to exercise its power to grant or deny a permit in a manner which will take private property for public use. Application of Section 30010 may overcome the presumption of denial in some instances. The subject of what government action results in a "taking" was addressed by the U.S. Supreme Court in *Lucas v. South Carolina Coastal Council*. In *Lucas*, the Court identified several factors that should be considered in determining whether a proposed government action would result in a taking. For instance, the Court held that where a permit applicant has demonstrated that he or she has a sufficient real property interest in the property to allow the proposed project, and that project denial would deprive his or her property of <u>all</u> economically viable use, then denial of the project by a regulatory agency might result in a taking of the property for public use unless the proposed project would constitute a nuisance under State law. Another factor that should be considered is the extent to which a project denial would interfere with reasonable investment-backed expectations.

The Commission interprets Section 30010, together with the *Lucas* decision, to mean that if Commission denial of the project would deprive an applicant's property of all reasonable economic use, the Commission may be required to allow some development even where a Coastal Act policy would otherwise prohibit it, unless the proposed project would constitute a nuisance under state law. In other words, Section 30240 of the Coastal Act cannot be read to deny all economically beneficial or productive use of land because Section 30240 cannot be interpreted to require the Commission to act in an unconstitutional manner.

In the subject case, the applicants purchased the property in June 1978 for approximately $40,000. The parcel was designated in the County's certified Land Use Plan in 1986 for residential use (Rural Land I, which allows residential development at a maximum density of 1 dwelling unit per 10 acres). The County's certified Land Use Plan did not designate the

vegetation on the site as ESHA. At the time the applicants purchased the property, the parcel was located within a zone district that would allow construction of a residence. In addition, residential development had occurred in the general vicinity, including approximately one mile north of the project site. Based on these facts, the applicants had reason to believe that they had purchased a parcel on which they would be able to build a residence.

The Commission finds that in this particular case, other allowable uses for the subject site, such as a recreational park or a nature preserve, are not feasible and would not provide the owner an economic return on the investment. The parcel is 1.55 acres and there are other residential developments approximately ½ mile to the southwest, west and north of the site. In addition, a single family residence has been approved immediately south of the subject parcel but has not yet been constructed [CDP No. 4-00-236 (Barney)]. Public parkland and open space has been acquired in the vicinity (the boundary of Charmlee County Park is approximately ¾ mile south of the subject site), but there is no parkland directly adjacent to the project site. There is currently not an offer to purchase the property from any public park agency. The Commission thus concludes that in this particular case there is no viable alternative use for the site other than residential development. The Commission finds, therefore, that outright denial of all residential use would interfere with reasonable investment-backed expectations and deprive the property of all reasonable economic use.

Next the Commission turns to the question of nuisance. There is no evidence that construction of a residence would create a nuisance under California law. Other houses have been constructed in similar situations in chaparral habitat in Los Angeles County, apparently without the creation of nuisances. The County's Health Department has not reported evidence of septic system failures. In addition, the County has reviewed and approved the applicant's proposed septic system, ensuring that the system will not create public health problems. Furthermore, the use that is proposed is residential, rather than, for example, industrial, which might create noise or odors or otherwise create a public nuisance. In conclusion, the Commission finds that a residential project can be allowed to permit the applicant a reasonable economic use of their property consistent with Section 30010 of the Coastal Act.

While the applicant is entitled under Section 30010 to an assurance that the Commission will not act in such a way as to take their property, this section does not authorize the Commission to avoid application of the policies of the Coastal Act, including Section 30240, altogether. Instead, the Commission is only directed to avoid construing these policies in a way that would take property. Aside from this instruction, the Commission is still otherwise directed to enforce the requirements of the Act. Therefore, in this situation, the Commission must still comply with Section 30240 by avoiding impacts that would disrupt and/or degrade environmentally sensitive habitat, to the extent this can be done without taking the property.

As discussed above, the proposed development will be approved within ESHA in order to provide an economically viable use. Siting and design alternatives have been considered in order to identify the alternative that can avoid and minimize impacts to ESHA to the maximum extent feasible. In this case, the small size and topographic constraints of the lot allow for few siting alternatives for the proposed residence, which the applicants propose to locate on a graded pad cut into the top of the knoll. Siting of the residence in any other location on the property would not significantly minimize impacts to ESHA.

In approving development in the Santa Monica Mountains, the Commission has consistently limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to cluster development and minimize the adverse impacts to

ESHA from the development itself as well as the associated fuel modification requirements. (The Commission defines the development area as including the building pad and all graded slopes, all structures, and parking areas, but not the area of one access driveway or roadway and one hammerhead safety turnaround, as required by the Los Angeles County Fire Department.) The applicants originally proposed a development area of approximately 13,872 sq. ft. The applicants subsequently submitted a revised site plan with a 9,988 sq. ft. building pad surrounded on three sides by a berm, in order to reduce the visual impacts of the proposed project. However, the graded berm would enlarge the proposed development area by approximately 3,000 square feet, thus exceeding the 10,000 sq. ft. limit on development in ESHA. Thus, neither development proposal conforms to the 10,000 sq. ft. limit that the Commission has consistently allowed in similar situations on sites containing ESHA.

Therefore, in order to minimize impacts to ESHA, the Commission finds it necessary to require the applicant to submit revised plans reducing the proposed development area to no greater than 10,000 square feet, as required by **Special Condition Twelve (12)**. The development area shall include any graded slopes (and berms, if proposed), but may exclude the proposed access driveway and turnaround. As conditioned by **Special Condition Twelve (12)**, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible.

However, given the location of ESHA on the site, there will still be significant impacts to ESHA resulting from the required fuel modification area around the approved structure. The following discussion of ESHA impacts from new development and fuel modification is based on the findings of the Malibu LCP[3].

Fuel modification is the removal or modification of combustible native or ornamental vegetation. It may include replacement with drought tolerant, fire resistant plants. The amount and location of required fuel modification would vary according to the fire history of the area, the amount and type of plant species on the site, topography, weather patterns, construction design, and siting of structures. There are typically three fuel modification zones applied by the Fire Department:

> Zone A (Setback Zone) is required to be a minimum of 20 feet beyond the edge of protected structures. In this area native vegetation is cleared and only ground cover, green lawn, and a limited number of ornamental plant species are allowed. This zone must be irrigated to maintain a high moisture content.
>
> Zone B (Irrigated Zone) is required to extend from the outermost edge of Zone A to a maximum of 80 feet. In this area ground covers may not extend over 18 inches in height. Some native vegetation may remain in this zone if they are adequately spaced, maintained free of dead wood and individual plants are thinned. This zone must be irrigated to maintain a high moisture content.
>
> Zone C (Thinning Zone) is required to extend from the outermost edge of Zone B up to 100 feet. This zone would primarily retain existing native vegetation, with the exception of high fuel species such as chamise, red shank, California sagebrush, common buckwheat and sage. Dead or dying vegetation must be removed and the fuel in existing vegetation reduced by thinning individual plants.

[3] Revised Findings for the City of Malibu Local Coastal Program (as adopted on September 13, 2002) adopted on February 6, 2003.

Thus, the combined required fuel modification area around structures can extend up to a maximum of 200 feet. If there is not adequate area on the project site to provide the required fuel modification for structures, then brush clearance may also be required on adjacent parcels.

Notwithstanding the need to protect structures from the risk of wildfire, fuel modification results in significant adverse impacts that are in excess of those directly related to the development itself. Within the area next to approved structures (Zone A), all native vegetation must be removed and ornamental, low-fuel plants substituted. In Zone B, most native vegetation will be removed or widely spaced. Finally, in Zone C, native vegetation may be retained if thinned, although particular high-fuel plant species must be removed (Several of the high fuel species are important components of the coastal sage scrub community). In this way, for a large area around any permitted structures, native vegetation will be cleared, selectively removed to provide wider spacing, and thinned.

Obviously, native vegetation that is cleared and replaced with ornamental species, or substantially removed and widely spaced will be lost as habitat and watershed cover. Additionally, thinned areas will be greatly reduced in habitat value. Even where complete clearance of vegetation is not required, the natural habitat can be significantly impacted, and ultimately lost. For instance, in coastal sage scrub and chaparral habitat, the natural soil coverage of the canopies of individual plants provides shading and reduced soil temperatures. When these plants are thinned, the microclimate of the area will be affected, increasing soil temperatures, which can lead to loss of individual plants and the eventual conversion of the area to a dominance of different non-native plant species. The areas created by thinning between shrubs can be invaded by non-native grasses that will over time out-compete native species.

For example, undisturbed coastal sage scrub and chaparral vegetation typical of coastal canyon slopes, and the downslope riparian corridors of the canyon bottoms, ordinarily contains a variety of tree and shrub species with established root systems. Depending on the canopy coverage, these species may be accompanied by understory species of lower profile. The established vegetative cover, including the leaf detritus and other mulch contributed by the native plants, slows rainfall runoff from canyon slopes and staunches silt flows that result from ordinary erosional processes. The native vegetation thereby limits the intrusion of sediments into downslope creeks. Accordingly, disturbed slopes where vegetation is either cleared or thinned are more directly exposed to rainfall runoff that can therefore wash canyon soils into down-gradient creeks. The resultant erosion reduces topsoil and steepens slopes, making revegetation increasingly difficult or creating ideal conditions for colonization by invasive, non-native species that supplant the native populations.

The cumulative loss of habitat cover also reduces the value of the sensitive resource areas as a refuge for birds and animals, for example by making them—or their nests and burrows—more readily apparent to predators. The impacts of fuel clearance on bird communities was studied by Stralberg who identified three ecological categories of birds in the Santa Monica Mountains: 1) local and long distance migrators (ash-throated flycatcher, Pacific-slope flycatcher, phainopepla, black-headed grosbeak), 2) chaparral-associated species (Bewick's wren, wrentit, blue-gray gnatcatcher, California thrasher, orange-crowned warbler, rufous-crowned sparrow, spotted towhee, California towhee) and 3) urban-associated species (mourning dove, American crow,

Western scrub-jay, Northern mockingbird)[4]. It was found in this study that the number of migrators and chaparral-associated species decreased due to habitat fragmentation while the abundance of urban-associated species increased. The impact of fuel clearance is to greatly increase this edge-effect of fragmentation by expanding the amount of cleared area and "edge" many-fold. Similar results of decreases in fragmentation-sensitive bird species are reported from the work of Bolger et al. in southern California chaparral[5].

Fuel clearance and habitat modification may also disrupt native arthropod communities, and this can have surprising effects far beyond the cleared area on species seemingly unrelated to the direct impacts. A particularly interesting and well-documented example with ants and lizards illustrates this point. When non-native landscaping with intensive irrigation is introduced, the area becomes favorable for the invasive and non-native Argentine ant. This ant forms "super colonies" that can forage more than 650 feet out into the surrounding native chaparral or coastal sage scrub around the landscaped area[6]. The Argentine ant competes with native harvester ants and carpenter ants displacing them from the habitat[7]. These native ants are the primary food resource for the native coast horned lizard, a California "Species of Special Concern." As a result of Argentine ant invasion, the coast horned lizard and its native ant food resources are diminished in areas near landscaped and irrigated developments[8]. In addition to specific effects on the coast horned lizard, there are other Mediterranean habitat ecosystem processes that are impacted by Argentine ant invasion through impacts on long-evolved native ant-plant mutualisms[9]. The composition of the whole arthropod community changes and biodiversity decreases when habitats are subjected to fuel modification. In coastal sage scrub disturbed by fuel modification, fewer arthropod predator species are seen and more exotic arthropod species are present than in undisturbed habitats[10].

Studies in the Mediterranean vegetation of South Africa (equivalent to California shrubland with similar plant species) have shown how the invasive Argentine ant can disrupt the whole ecosystem.[11] In South Africa the Argentine ant displaces native ants as they do in California. Because the native ants are no longer present to collect and bury seeds, the seeds of the native plants are exposed to predation, and consumed by seed eating insects, birds and mammals. When this habitat burns after Argentine ant invasion the large-seeded plants that were protected by the native ants all but disappear. So the invasion of a non-native ant species drives out native ants, and this can cause a dramatic change in the species composition of the

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[4] Stralberg, D. 2000. Landscape-level urbanization effects on chaparral birds: a Santa Monica Mountains case study. Pp. 125–136 *in* Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (eds.). *2nd interface between ecology and land development in California*. U.S. Geological Survey, Sacramento, California.

[5] Bolger, D. T., T. A. Scott and J. T. Rotenberry. 1997. Breeding bird abundance in an urbanizing landscape in coastal Southern California. Conserv. Biol. 11:406-421.

[6] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056.

[7] Holway, D.A. 1995. The distribution of the Argentine ant (*Linepithema humile*) in central California: a twenty-year record of invasion. Conservation Biology 9:1634-1637. Human, K.G. and D.M. Gordon. 1996. Exploitation and interference competition between the invasive Argentine ant, (*Linepithema humile*), and native ant species. Oecologia 105:405-412.

[8] Fisher, R.N., A.V. Suarez and T.J. Case. 2002. Spatial patterns in the abundance of the coastal horned lizard. Conservation Biology 16(1):205-215. Suarez, A.V. J.Q. Richmond and T.J. Case. 2000. Prey selection in horned lizards following the invasion of Argentine ants in southern California. Ecological Applications 10(3):711-725.

[9] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology 79(6):2041-2056. Bond, W. and P. Slingsby. Collapse of an Ant-Plant Mutualism: The Argentine Ant (*Iridomyrmex humilis*) and Myrmecochorous Proteaceae. Ecology 65(4):1031-1037.

[10] Longcore, T.R. 1999. Terrestrial arthropods as indicators of restoration success in coastal sage scrub. Ph.D. Dissertation, University of California, Los Angeles.

[11] Christian, C. 2001. Consequences of a biological invasion reveal the importance of mutualism for plant communities. Nature 413:635-639.

plant community by disrupting long-established seed dispersal mutualisms. In California, some insect eggs are adapted to being buried by native ants in a manner similar to plant seeds[12].

While these impacts resulting from fuel modification can be reduced through siting and design alternatives for new development, they cannot be completely avoided, given the high fire risk and the extent of ESHA on the site. The Commission finds that the loss of chaparral ESHA resulting from the removal, conversion, or modification of natural habitat for new development including fuel modification and brush clearance must be mitigated. The acreage of habitat that is impacted must be determined based on the size of the required fuel modification zone.

In this case, the applicants' approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown in a radius extending approximately 100 feet from the proposed structures, or to the property line, which to the east, west, and north is located less than 100 feet from the proposed structures. A "C" Zone (thinning zone) extends to the property line south of the proposed residence. In addition, brush clearance, extending a distance of 200 feet from the proposed residence, will be required on adjacent properties.

The ESHA area affected by the proposed development does not include Lulu Carr Road, a dirt road immediately west of the subject property, and Encinal Canyon Road, which is located within 200 feet of the proposed residence. As noted above, portions of the subject property, have been disturbed by previous clearing and grading of an access driveway and small pad, without benefit of a coastal development permit. These areas currently contain ruderal vegetation as well as native chaparral species. However, review of historical aerial photographs of the site by staff indicates that the clearance and grading occurred sometime between 1977 and 1986 and that the project site contained undisturbed chaparral vegetation as of the January 1, 1977 effective date of the Coastal Act. In determining the extent of ESHA, the Commission must consider the condition of the subject site prior to any unpermitted development. Prior to the unpermitted clearance and grading, the entire site contained undisturbed chaparral vegetation, contiguous with a large area of contiguous chaparral habitat that still exists. Thus, the entire site is considered environmentally sensitive habitat. As such, the area of ESHA that will be removed by the project must include those areas that were cleared and/or graded after 1977 without a coastal development permit. The precise area of ESHA that will be impacted by the proposed development has not been calculated. Therefore, the Commission finds that it is necessary to require the applicant to delineate the ESHA both on and offsite that will be impacted by the proposed development including the areas affected by fuel modification and brushing activities, as required by **Special Condition Nine (9)**.

The Commission has identified three methods for providing mitigation for the unavoidable loss of ESHA resulting from development, including habitat restoration, habitat conservation, and an in-lieu fee for habitat conservation. The Commission finds that these measures are appropriate in this case to mitigate the loss of chaparral habitat on and offsite. These three mitigation methods are provided as three available options for compliance with **Special Condition Nine (9)**. The first method is to provide mitigation through the restoration of an area of degraded habitat (either on the project site, or at an off-site location) that is equivalent in size to the area of habitat impacted by the development. A restoration plan must be prepared by a biologist or qualified resource specialist and must provide performance standards, and provisions for

[12] Hughes, L. and M. Westoby. 1992. Capitula on stick insect eggs and elaiosomes on seeds: convergent adaptations for burial by ants. Functional Ecology 6:642-648.

maintenance and monitoring. The restored habitat must be permanently preserved through the recordation of an open space easement. This mitigation method is provided for in **Special Condition Nine (9)**, **subpart A**.

The second habitat impact mitigation method is habitat conservation. This includes the conservation of an area of intact habitat equivalent to the area of the impacted habitat. The parcel containing the habitat conservation area must be restricted from future development and permanently preserved. If the mitigation parcel is larger in size than the impacted habitat area, the excess acreage could be used to provide habitat impact mitigation for other development projects that impact ESHA. This mitigation method is provided for in **Special Condition Nine (9)**, **subpart B**.

The third habitat impact mitigation option is an in-lieu fee for habitat conservation. The fee is based on the habitat types in question, the cost per acre to restore or create the comparable habitat types, and the acreage of habitat affected by the project. In order to determine an appropriate fee for the restoration or creation of chaparral and coastal sage scrub habitat, the Commission's biologist contacted several consulting companies that have considerable experience carrying out restoration projects. Overall estimates varied widely among the companies, because of differences in the strategies employed in planning the restoration (for instance, determining the appropriate number of plants or amount of seeds used per acre) as well as whether all of the restoration planting, monitoring and maintenance was carried out by the consultant or portions are subcontracted. Additionally, the range of cost estimates reflect differences in restoration site characteristics including topography (steeper is harder), proximity to the coast (minimal or no irrigation required at coastal sites), types of plants (some plants are rare or difficult to cultivate), density of planting, severity of weed problem, condition of soil, etc. Larger projects may realize some economy of scale.

Staff determined the appropriate mitigation for loss of coastal sage scrub or chaparral ESHA should be based on the actual installation of replacement plantings on a disturbed site, including the cost of acquiring the plants (seed mix and container stock) and installing them on the site (hydroseeding and planting). Three cost estimates were obtained for the installation of plants and seeds for one-acre of restoration. These estimates were $9,541, $12,820, and $13,907 per acre of plant installation. The Commission finds it appropriate to average the three estimates of plant installation to arrive at the reasonable in-lieu fee to mitigate for the loss of ESHA associated with the approval of development within an ESHA. Based on this averaging, the required in-lieu fee for habitat mitigation is $12,000 (rounded down from the average figure of $12,089 to simplify administration) per acre of habitat.

The Commission finds that the in-lieu fee of $12,000 per acre is appropriate to provide mitigation for the habitat impacts to ESHA areas where all native vegetation will be removed (building site and the "A" zone required for fuel modification), and where vegetation will be significantly removed and any remaining vegetation will be subjected to supplemental irrigation (the "B" zone or any other irrigated zone required for fuel modification). In these areas, complete removal or significant removal of ESHA, along with irrigation completely alters the habitat and eliminates its value to the native plant and animal community.

ESHA modified for the "C" zone that is thinned but non-irrigated (required for fuel modification) is certainly diminished in habitat value, but unlike the building site, "A" zone, "B" zone, and any other irrigated zone, habitat values are not completely destroyed. Native vegetation in the "C" zone is typically required to be thinned, and shrubs must be maintained at a certain size to minimize the spread of fire between the individual plants. This area is not typically required to

be irrigated. As such, the Commission finds that it is not appropriate to require the same level of in-lieu fee mitigation for impacts to ESHA within a non-irrigated "C" zone required for fuel modification. Although the habitat value in the "C" zone (or any other non-irrigated zone) is greatly reduced, it is not possible to precisely quantify the reduction. The Commission's biologist believes that the habitat value of non-irrigated fuel modification zones is reduced by at least 25 percent (and possibly more) due to the direct loss of vegetation, the increased risk of weed invasion, and the proximity of disturbance. The Commission finds that it is also less costly difficult to restore chaparral habitat when some of the native vegetation remains, rather than when all of the native habitat is removed. Because of the uncertainty and the inability to precisely quantify the reduction in habitat value, the Commission concludes that it is warranted to impose a mitigation fee of $3,000 per acre (one quarter of the cost of full restoration) for the "C" zone or other non-irrigated fuel modification zone.

In this case, the applicants' approved fuel modification plan (approved by the Los Angeles County Fire Department) shows the use of the standard three zones of vegetation modification. Zones "A" (setback zone) and "B" (irrigation zone) are shown in a radius extending approximately 100 feet from the proposed structures, or to the property line, which to the east, west, and north is located less than 100 feet from the proposed structures. A "C" Zone (thinning zone) extends to the property line south of the proposed residence. In addition, brush clearance, extending a distance of 200 feet from the proposed residence, will be required on adjacent properties. As discussed above, the ESHA area affected by the proposed development does not include Lulu Carr Road, a dirt road immediately west of the subject property, and Encinal Canyon Road, which is located within 200 feet of the proposed residence, but must include those areas that were cleared and/or graded after 1977 without a coastal development permit. The precise area of ESHA that will be impacted by the proposed development has not been calculated. The appropriate in-lieu fee calculation would be based on $12,000 per acre for any irrigated fuel modification area (the "A" and "B" Zones) and $3,000 per acre of un-irrigated fuel modification area (zone "C") or brush clearance area.

Should the applicant choose the in-lieu fee mitigation method, the fee shall be provided to the Mountains Recreation and Conservation Authority for the acquisition or permanent preservation of natural habitat areas within the coastal zone. This mitigation method is provided for in **Special Condition Nine (9)**, **subpart C**.

The Commission has determined that in conjunction with siting new development to minimize impacts to ESHA, additional actions can be taken to minimize adverse impacts to ESHA.

As noted above, unpermitted development has occurred on the subject site, including clearance of vegetation and grading of an access driveway and small pad. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The proposed development, including required fuel modification, encompasses the entire area of unpermitted clearance. In addition, the unpermitted graded areas will be largely included within the footprint of the proposed access driveway and turnaround. Those portions not utilized by the proposed driveway and turnaround will be located within Zone B of the required fuel modification plan and therefore will be planted with primarily native vegetation pursuant to **Special Condition Three (3),** as discussed below. In this case, as the unpermitted disturbed areas will be located within the development area or irrigated fuel modification areas approved under this CDP, it is not necessary to require restoration of these areas. Therefore, the unpermitted grading and clearance, in the context of the proposed project, will not have significant impacts on ESHA beyond those posed by the proposed project.

The proposed project includes removal of the unpermitted abandoned vehicles, appliances, and other discarded items located on the property. These items constitute development that is located within a chaparral ESHA and is not dependent on ESHA, and that is inconsistent with Coastal Act policies to minimize adverse impacts to ESHA. Therefore, in order to ensure that the applicants' proposal to remove the discarded items is implemented, **Special Condition Thirteen (13)** requires the applicants to remove the unpermitted items within 90 days of the issuance of the subject permit.

The Commission finds that the use of non-native and/or invasive plant species for residential landscaping results in both direct and indirect adverse effects to native plants species indigenous to the Malibu/Santa Monica Mountains area. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the Malibu/Santa Monica Mountains area. Therefore, in order to minimize adverse effects to the indigenous plant communities of the Malibu/Santa Monica Mountains area, **Special Condition Three (3)** requires that all landscaping consist primarily of native plant species and that invasive plant species shall not be used.

The Commission notes that streams and drainages, such as Lachusa Creek and numerous tributary drainage courses located downstream of the subject site, provide important habitat for wetland and riparian plant and animal species. Section 30231 of the Coastal Act provides that the quality of coastal waters and streams shall be maintained and restored whenever feasible through means such as: controlling runoff, preventing interference with surface water flows and alteration of natural streams, and by maintaining natural vegetation buffer areas. In past permit actions the Commission has found that new development adjacent to coastal streams and natural drainages results in potential adverse impacts to riparian habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of riparian plant and animal habitat. Drainage courses below the site transmit runoff into Lachusa Creek, and as such, the Commission finds that potential adverse effects of the proposed development on riparian habitat of this stream may be further minimized through the implementation of a drainage and polluted runoff control plan, which will ensure that erosion is minimized and polluted run-off from the site is controlled and filtered before it reaches natural drainage courses within the watershed. Therefore, the Commission requires **Special Condition Two (2)**, the Drainage and Polluted Runoff Control Plan, which requires the applicant to incorporate appropriate drainage devices and Best Management Practices (BMPs) to ensure that run-off from the proposed structures, impervious surfaces, and building pad area is conveyed offsite in a non-erosive manner and is treated/filtered to reduce pollutant load before it reaches coastal waterways.

In addition, the Commission has found that night lighting of areas in the Malibu/Santa Monica Mountains area creates a visual impact to nearby scenic roads, parks, and trails. In addition, night lighting may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The subject site contains environmentally sensitive habitat. Therefore, **Special Condition Seven (7)**, the Lighting Restriction, limits night lighting of the site in general; limits lighting to the developed area of the site; and specifies that lighting be shielded downward. The restriction on night lighting is necessary to protect the nighttime rural character of this portion of the Santa Monica Mountains consistent with the scenic and visual qualities of this coastal area.

In addition, low intensity security lighting will assist in minimizing the disruption of wildlife traversing this area at night that are commonly found in this rural and relatively undisturbed area. Thus, the lighting restrictions will attenuate the impacts of unnatural light sources and reduce impacts to sensitive wildlife species.

Finally, the Commission finds that the amount and location of any new development that may be proposed in the future on the subject site is significantly limited by the unique nature of the site and the environmental constraints discussed above. Therefore, to ensure that any future structures, additions, change in landscaping or intensity of use at the project site, that may otherwise be exempt from coastal permit requirements, are reviewed by the Commission for consistency with the resource protection policies of the Coastal Act, **Special Condition Six (6)**, the future development restriction, has been required. **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the property and provides any prospective purchaser of the site with recorded notice that the restrictions are imposed on the subject property.

For the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, and 30240 of the Coastal Act**.**

E. VISUAL RESOURCES

Section 30251 of the Coastal Act states:

> ***The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline reservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.***

Section 30251 of the Coastal Act requires scenic and visual qualities to be considered and preserved. In addition, the following policies of the Malibu-Santa Monica Mountains Land Use Plan (LUP) provide guidance:

> ***P125 New development shall be sited and designed to protect public views from LCP-designated scenic highways to and along the shoreline and to scenic coastal areas, including public parklands. Where physically and economically feasible, development on sloped terrain should be set below road grade.***
>
> ***P130 In highly scenic areas, and along scenic highways, new development (including buildings, fences, paved areas, signs, and landscaping) shall:***
>
> - ***be sited and designed to protect views to and along the ocean and to and along other scenic features, as defined and identified in the Malibu LCP.***
> - ***minimize the alteration of natural landforms***
> - ***be landscaped to conceal raw-cut slopes***

- ***be visually compatible with and subordinate to the character of its setting***
- ***be sited so as not to significantly intrude into the skyline as seen from public viewing places***

P131 Where feasible, prohibit placement of structures that will break the ridgeline view, as seen from public places.

P137 Clustering of development in suitable areas shall be encouraged as a means to facilitate greater view protection.

The subject site is located within a scenic rural area characterized by expansive, naturally vegetated mountains and hillsides. The site will be visible from Encinal Canyon Road and the proposed Three Park Lateral Trail and Trancas Canyon Trail, which afford scenic vistas of the relatively undisturbed natural area. While scattered residential development is located approximately ½ mile southwest, west, and north of the subject site, and a residence has been approved immediately south of the site [CDP No. 4-00-236 (Barney)], the site is surrounded by undeveloped hillside. The project site consists of a knoll that is visible from various public viewing areas, including along Encinal Canyon Road, that afford scenic vistas of the relatively undisturbed natural area. The site is also visible from the proposed National Park Service Three Park Lateral Trail and the proposed Los Angeles County Department of Parks and Recreation Trancas Canyon Trail, which run parallel to and immediately downslope of the subject parcel's western property line. The scenic nature of the area is reflected in the certified Malibu-Santa Monica Mountains Land Use Plan (LUP), which designates several ridgelines in the area, as scenic ridgelines. However, the minor ridgeline that includes the knoll on which the proposed project is located is not a designated scenic ridgeline.

As noted above, the applicants proposes to construct a one-story, 2,174 sq. ft. single family residence, 825 sq. ft. detached three-car garage, turnaround, septic system, and water tank on a graded pad cut into the top of the knoll. The proposal would entail approximately 5200 cu. yds. of grading (4,660 cu. yds. cut, 540 cu. yds. fill) and removal of the top 16 feet of the knoll. The proposal thus would require significant alteration of a landform prominent from public roads and trails.

Staff has explored siting and design alternatives with the applicants in order to identify the alternative that can avoid and minimize visual impacts to the maximum extent feasible. In this case, the small size and topographic constraints of the lot allow for few siting alternatives for the proposed residence. Construction of the residence on the southern slope of the property would increase the project's visibility from Encinal Canyon Road. Construction of the residence on the steep western slopes would involve significant landform alteration and substantial reduction in the already modest size of the proposed residence, and would result in a residence that would loom prominently over the designated Three Parks Lateral Trail. Thus, siting of the residence in any other location on the property would not significantly minimize visual impacts. In addition, as the proposed residence is moderately sized and only one-story (17 feet) high, no design alternatives for the proposed residence exist that would significantly minimize visual impacts.

However, it is possible to reduce the size of the proposed development area and therefore reduce the prominence of the proposed development and the amount of grading required. In approving development in the Santa Monica Mountains, the Commission has consistently limited the development area for residential development in ESHA to a maximum development area of 10,000 square feet in order to minimize adverse impacts to coastal resources. (The Commission defines the development area as including the building pad and all graded slopes,

all structures, and parking areas, but not the area of one access driveway or roadway and one hammerhead safety turnaround, as required by the Los Angeles County Fire Department.) This 10,000 sq. ft. limit also serves to cluster development, reduce grading and landform alteration, and lessen the prominence of development, and thus reduce visual impacts in scenic areas. The applicants originally proposed a development area of approximately 13,872 square feet. The applicants subsequently submitted a revised site plan with a 9,988 sq. ft. building pad surrounded on three sides by a berm, in order to reduce the visual impacts of the proposed project. However, the graded berm would enlarge the proposed development area by approximately 3,000 square feet, thus exceeding the 10,000 sq. ft. limit on development in ESHA. In addition, planting of native vegetation of sufficient height and density to screen the proposed development from public viewing areas would afford similar mitigation of visual impacts as the proposed berm.

Therefore, in order to minimize the visual impacts of the project, the Commission finds it necessary to require the applicant to submit revised plans reducing the proposed development area to no greater than 10,000 square feet, as required by **Special Condition Twelve (12)**. The development area shall include any graded slopes (and berms, if proposed), but may exclude the proposed access driveway and turnaround. As conditioned by **Special Condition Twelve (12)**, the Commission concludes that the proposed siting and design of the project will minimize impacts to ESHA to the extent feasible.

As noted above, unpermitted development has occurred on the subject site, including clearance of vegetation and grading of an access driveway and small pad. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The proposed development, including required fuel modification, encompasses the entire area of unpermitted clearance. In addition, the proposed access driveway and turnaround utilize significant portions of the unpermitted road and small pad. The grading located outside of the proposed access driveway and turnaround is minor in nature and will not have significant impacts on visual resources. Furthermore, the unpermitted graded areas located outside of the proposed driveway and turnaround footprint will be located within Zone B of the required fuel modification plan and therefore will be planted with primarily native vegetation pursuant to **Special Condition Three (3),** as discussed below. Therefore, the unpermitted grading and clearance, in the context of the proposed project, will not have significant impacts on visual impacts.

As noted above, unpermitted development has occurred on the subject site, including clearance of vegetation and grading of an access driveway and small pad. In addition, several abandoned vehicles, appliances, and other discarded items are located on the site. The proposed development, including required fuel modification, encompasses the entire area of unpermitted clearance. In addition, the unpermitted graded areas will be largely included within the footprint of the proposed access driveway and turnaround.

The proposed project includes removal of the unpermitted abandoned vehicles, appliances, and other discarded items located on the property. Many of these items are visible from Encinal Canyon Road in unsightly contrast to the surrounding hillside environment, inconsistent with Coastal Act policies to minimize visual impacts. Therefore, in order to ensure that the applicants' proposal to remove the discarded items is implemented, **Special Condition Thirteen (13)** requires the applicants to remove the unpermitted items within 90 days of the issuance of the subject permit.

In addition, as the proposed residence will be unavoidably visible from scenic viewing areas, the Commission finds it necessary to require mitigation measures to minimize visual impacts associated with development of the project site.

Requiring the residence to be finished in a color consistent with the surrounding natural landscape and, further, by requiring that windows of the proposed structure be of a non-reflective glass type, can minimize impacts on public views. To ensure visual impacts associated with the colors of the structure and the potential glare of the window glass are minimized, the Commission requires the applicant to use colors compatible with the surrounding environment and non-glare glass, as detailed by **Special Condition Five (5).**

Visual impacts associated with proposed grading, and the structure itself, can be further reduced by the use of appropriate and adequate landscaping. Thus, **Special Condition Three (3)** requires the applicant to prepare a landscape plan relying mostly on native, noninvasive plant species to ensure that the vegetation on site remains visually compatible with the native flora of surrounding areas. Implementation of **Special Condition Three (3)** will soften the visual impact of the development from public views. To ensure that the final approved landscaping plans are successfully implemented, **Special Condition Three (3)** also requires the applicants to revegetate all disturbed areas in a timely manner and includes a monitoring component to ensure the successful establishment of all newly planted and landscaped areas over time. As noted above, planting of native vegetation of sufficient height and density to screen the proposed development from public viewing areas would serve to reduce the visual impacts of the proposed project. Thus, **Special Condition Three (3)** also requires the applicants to plant the property with native species of sufficient height and density to screen the proposed residence and garage from public viewing areas along Encinal Canyon Road and the adjacent proposed Three Park Lateral Trail and Trancas Canyon Trail.

Regarding future developments or improvements, certain types of development to the property, normally associated with a single family residence, which might otherwise be exempt, have the potential to impact scenic and visual resources in this area. It is necessary to ensure that any future development or improvements normally associated with the entire property, which might otherwise be exempt, are reviewed by the Commission for compliance with the scenic resource policy, Section 30251 of the Coastal Act. **Special Condition Six (6)**, the Future Development Restriction, will ensure that the Commission will have the opportunity to review future projects for compliance with the Coastal Act. Finally, **Special Condition Eight (8)** requires the applicant to record a deed restriction that imposes the terms and conditions of this permit as restrictions on use and enjoyment of the subject property and provides any prospective purchaser with recorded notice that the restrictions are imposed on the subject property.

The proposed project, as conditioned, will not result in a significant adverse impact to scenic public views or character of the surrounding area. Therefore the Commission finds that, as conditioned, the proposed development is consistent with section 30251 of the Coastal Act.

F. VIOLATION

Development has occurred on the subject site without the required coastal development permit, including, but not limited to, clearance of native chaparral vegetation, grading, and construction of a water well. The unpermitted development occurred prior to submission of this permit

application. The subject permit application addresses the unpermitted development, as well as the new development proposed in the subject application.

In order to ensure that the matter of unpermitted development addressed in this application is resolved without delay after approval of the application, **Special Condition Fourteen (14)** requires that the applicant satisfy all conditions of this permit that are prerequisite to the issuance of this permit within 180 days of Commission action, or within such additional time as the Executive Director may grant for good cause.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject sites without a coastal development permit.

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act states:

> ***Prior to certification of the local coastal program, a coastal development permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).***

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with Chapter 3 policies of the Coastal Act. The preceding sections provide findings that the proposed project will be in conformity with the provisions of Chapter 3 if certain conditions are incorporated into the project and accepted by the applicant. As conditioned, the proposed project will not create adverse impacts and is found to be consistent with the applicable policies contained in Chapter 3 of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the County's ability to prepare a Local Coastal Program for the Malibu/Santa Monica Mountains area that is consistent with the policies of Chapter 3 of the Coastal Act as required by §30604(a).

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission finds that, the proposed project, as conditioned, will not have any significant adverse effects on the environment, within the meaning of the California Environmental Quality Act of 1970. Therefore, the proposed project, as conditioned, has been adequately mitigated and is determined to be consistent with CEQA and the policies of the Coastal Act.

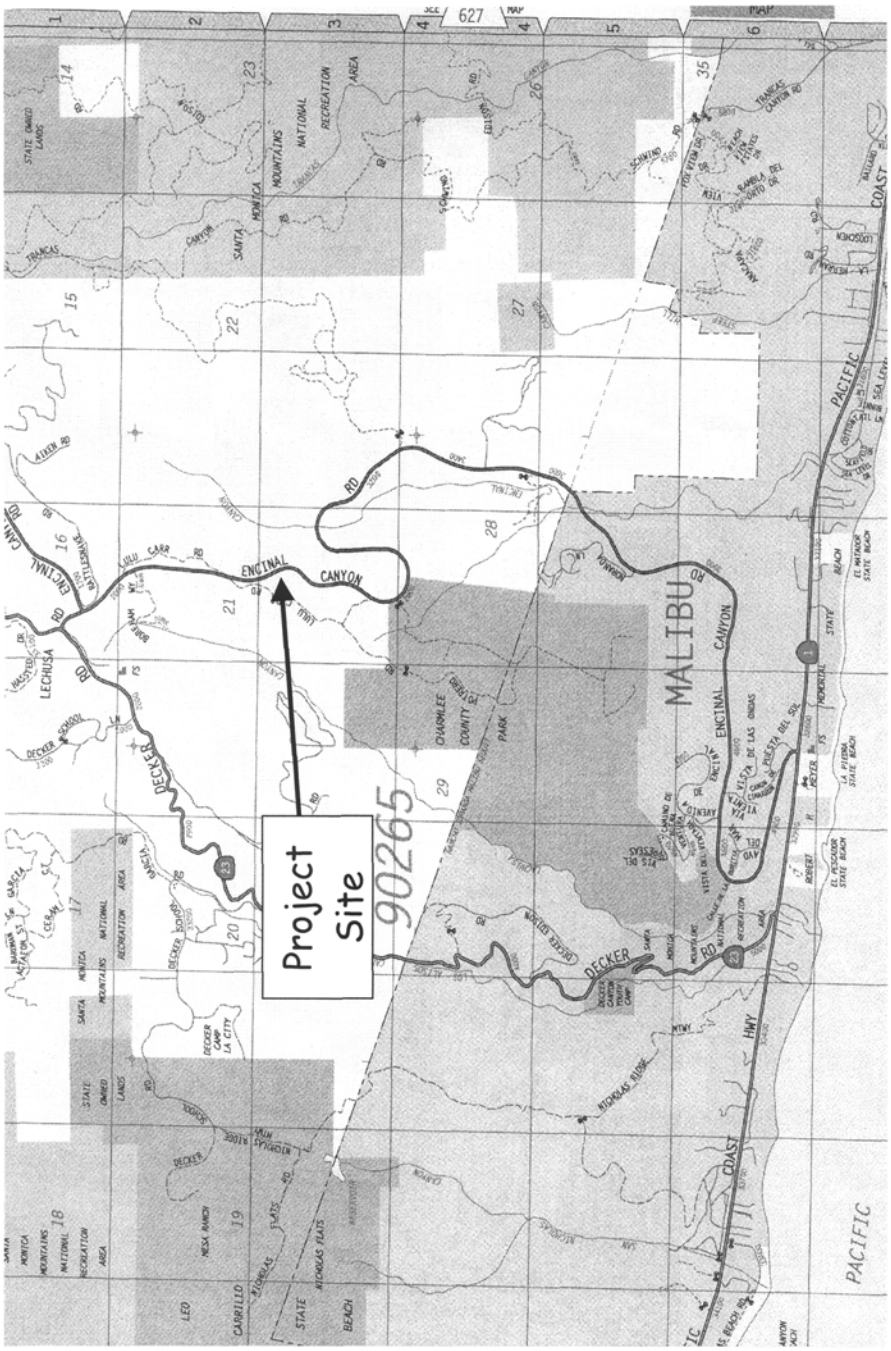

Exhibit 1
CDP No. 4-05-069
Vicinity Map

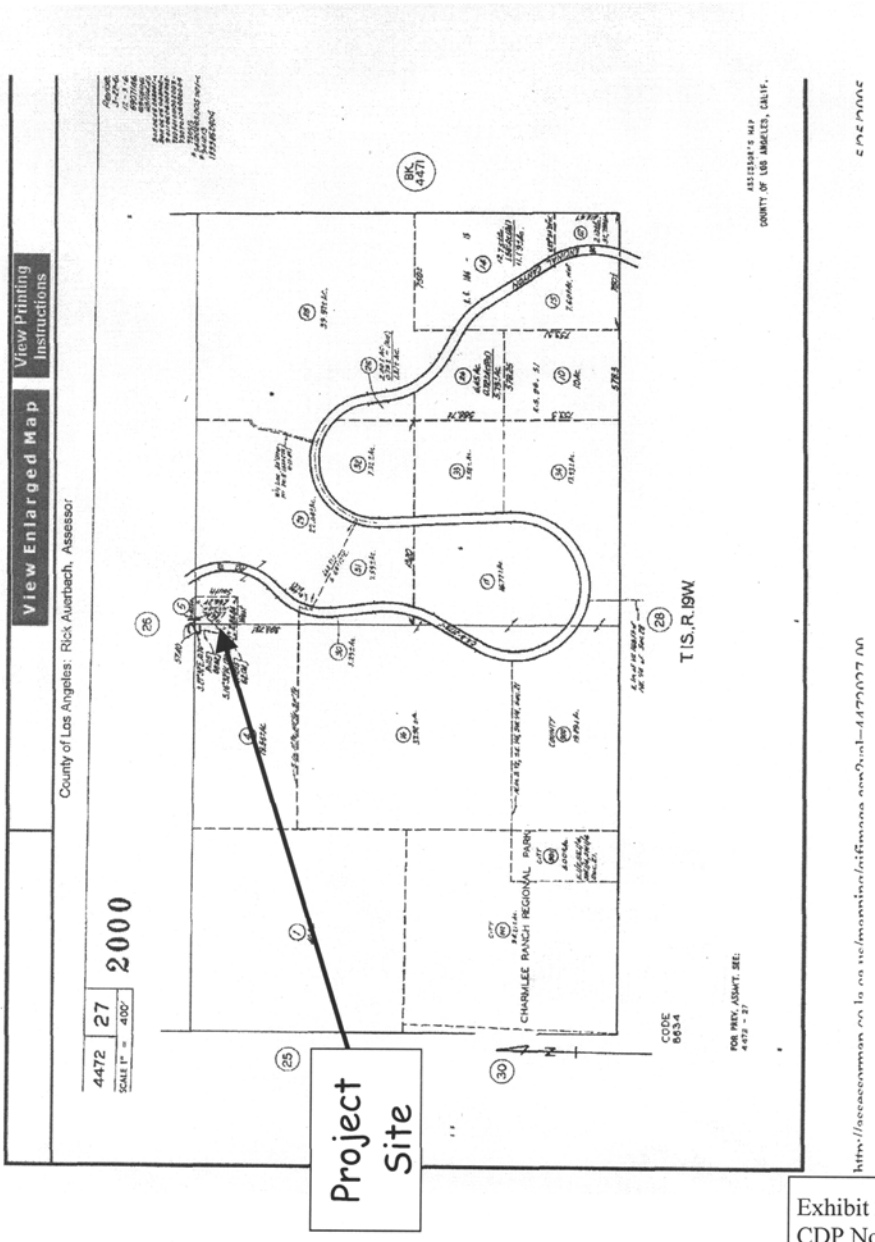

Exhibit 2
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Parcel Map

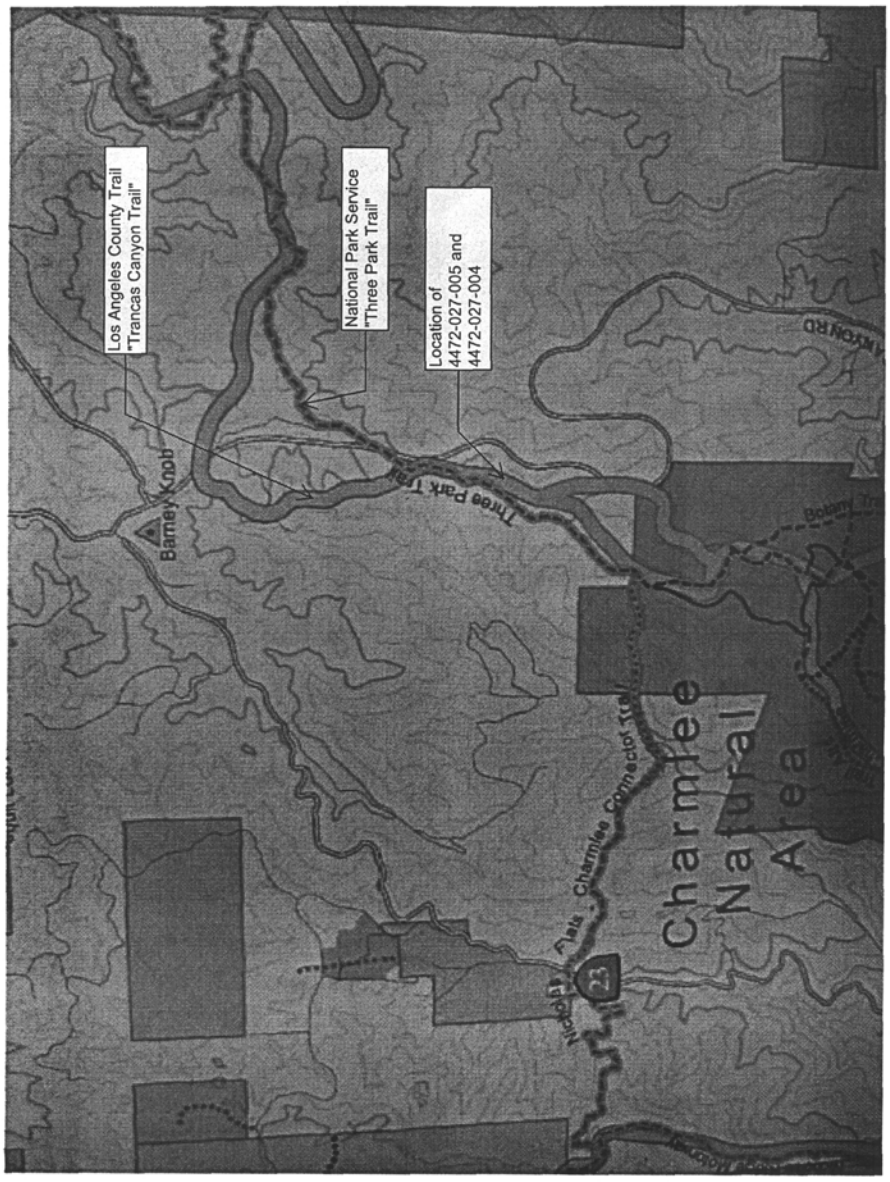

Exhibit 2a
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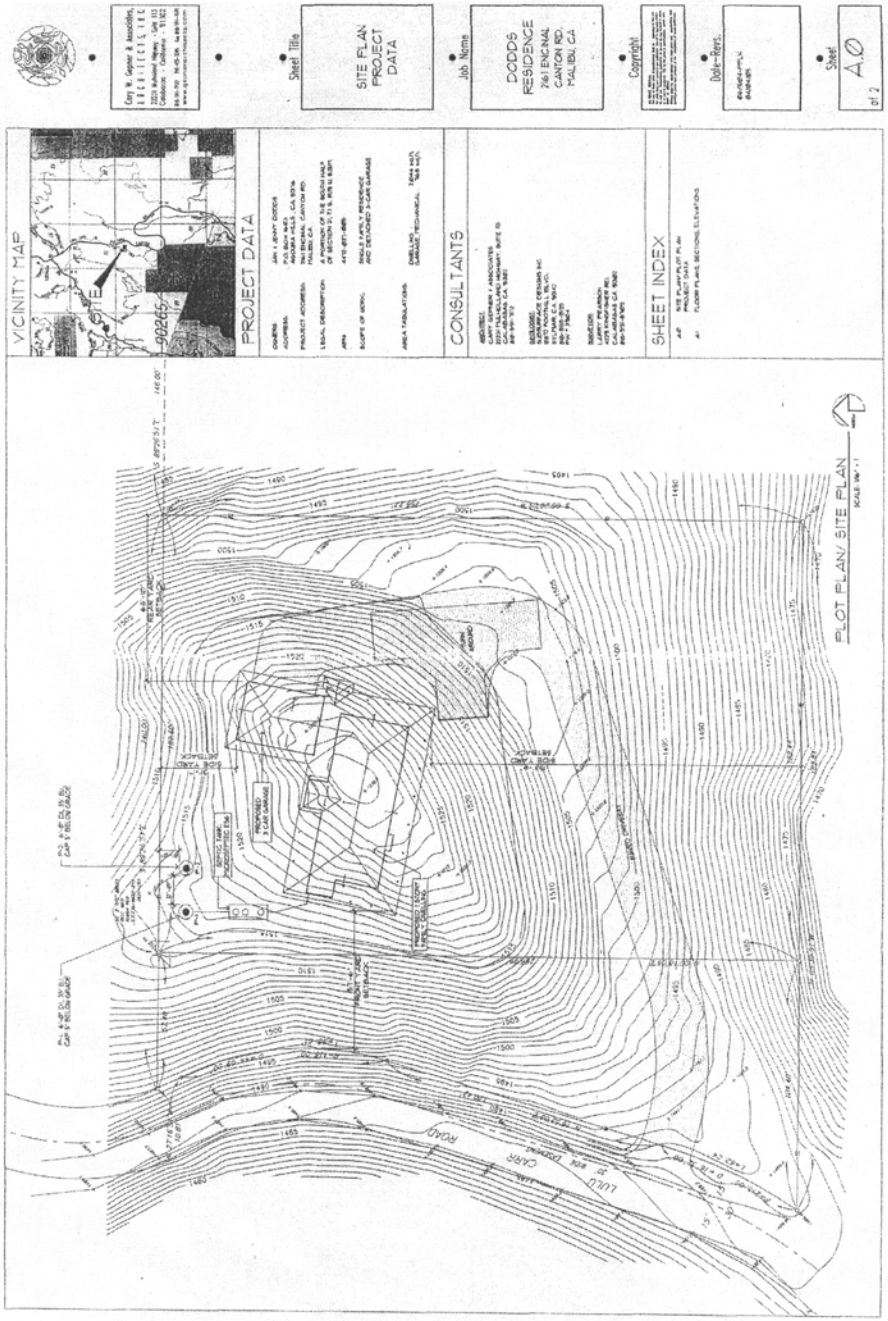

Exhibit 3
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Site Plan

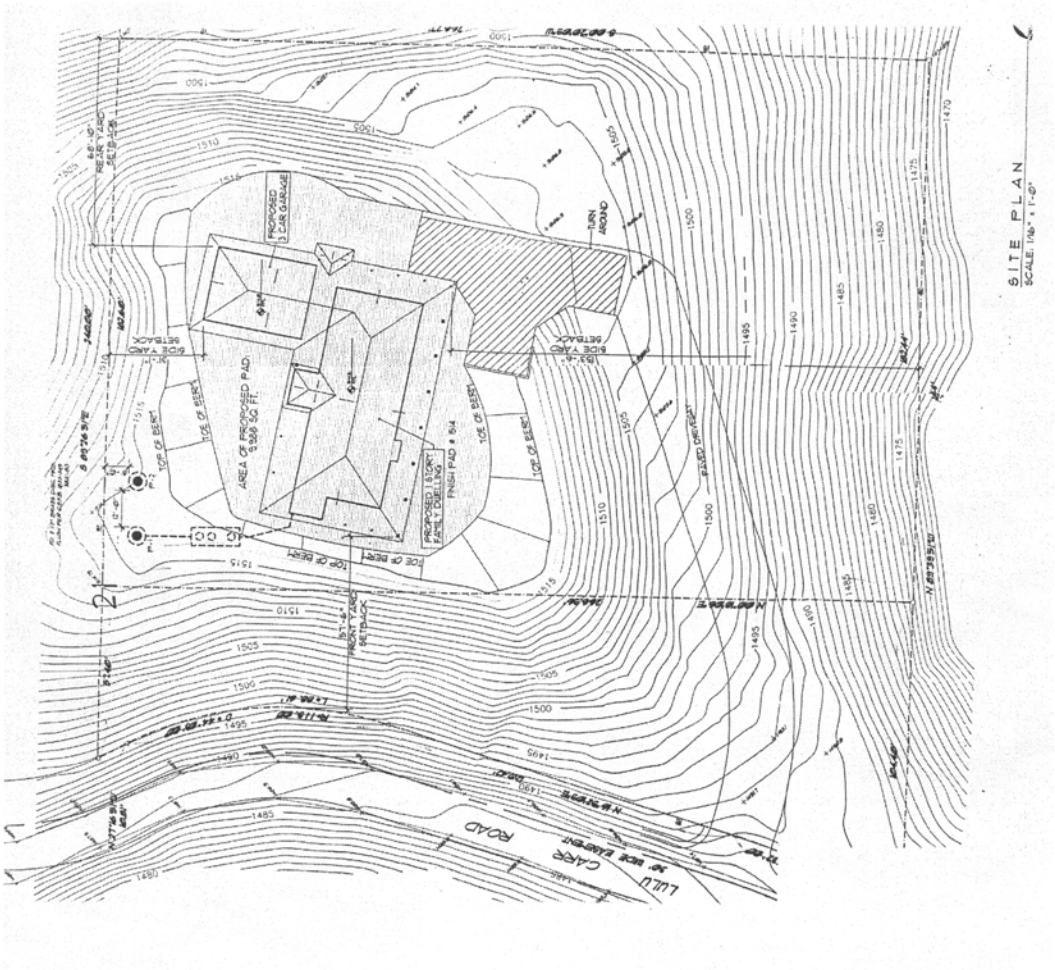

Exhibit 4
CDP No. 4-05-069
Revised Site Plan

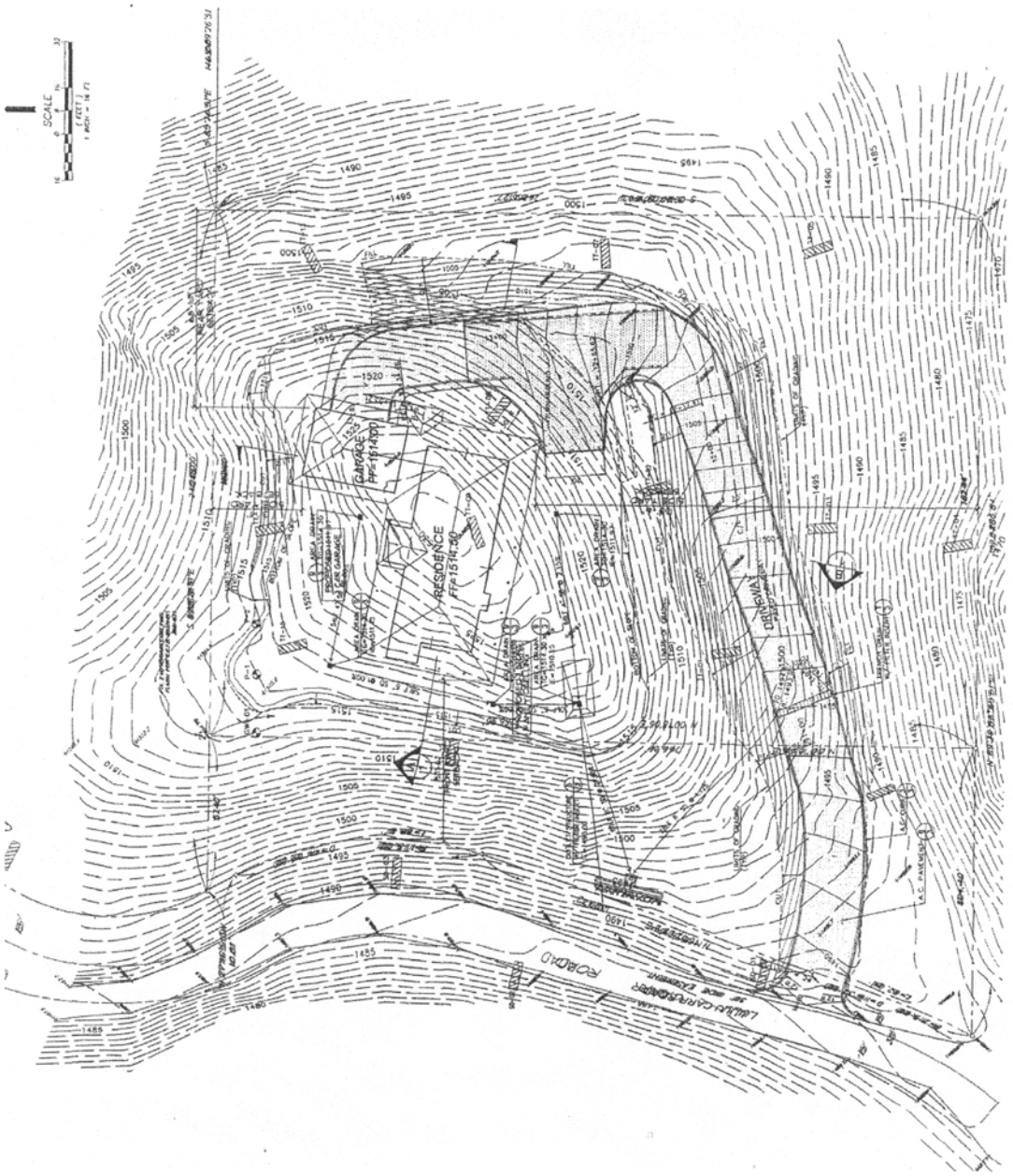

Exhibit 5
CDP No. 4-05-069
Grading Plan

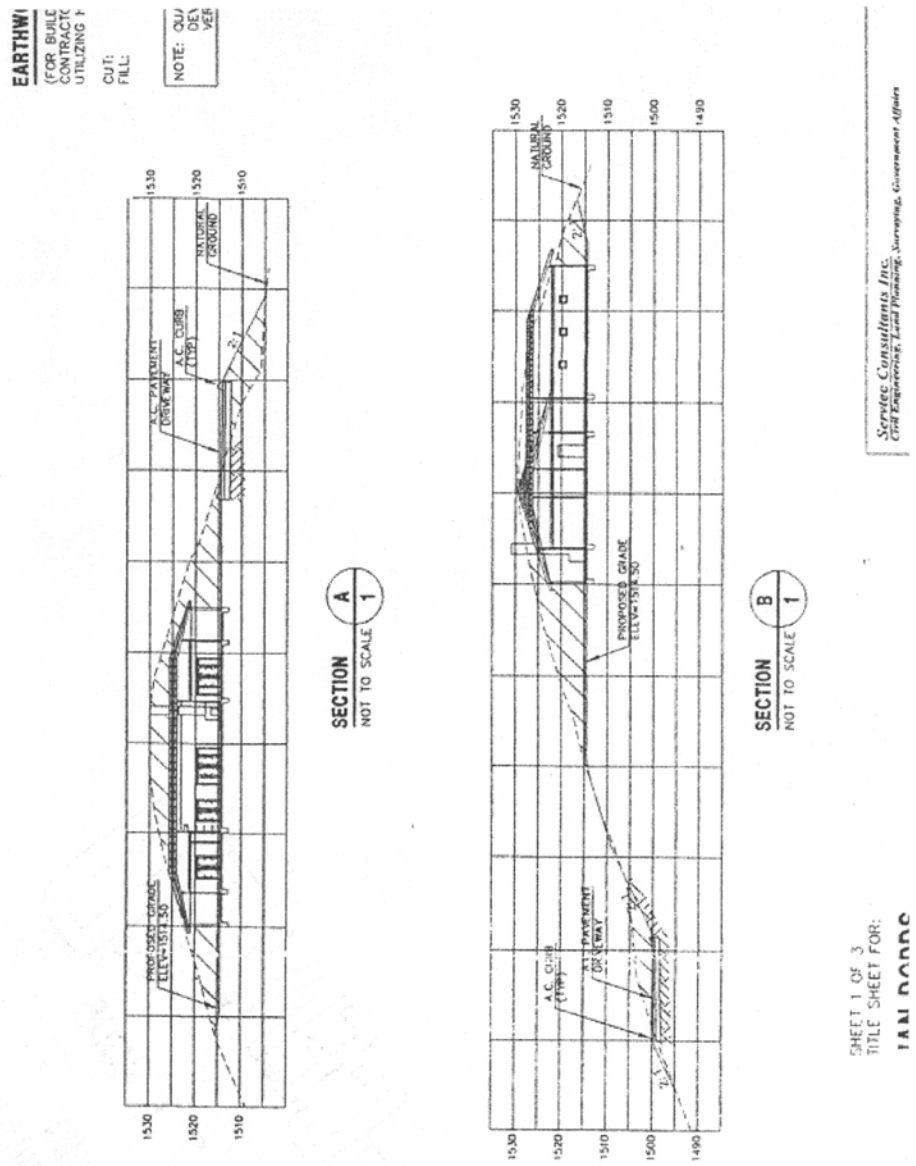

Exhibit 6
CDP No. 4-05-069
Grading Sections

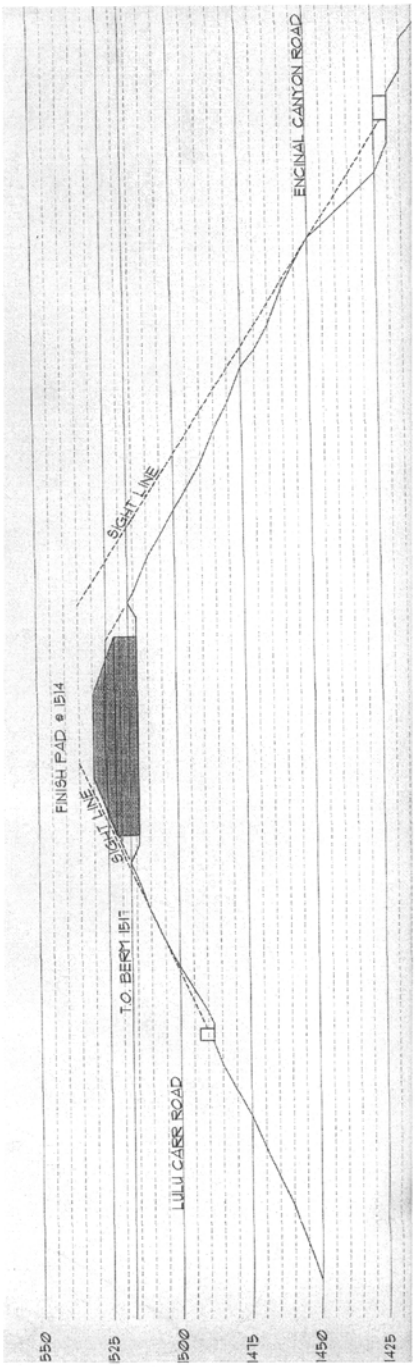

Exhibit 7
CDP No. 4-05-069
Revised Grading Section

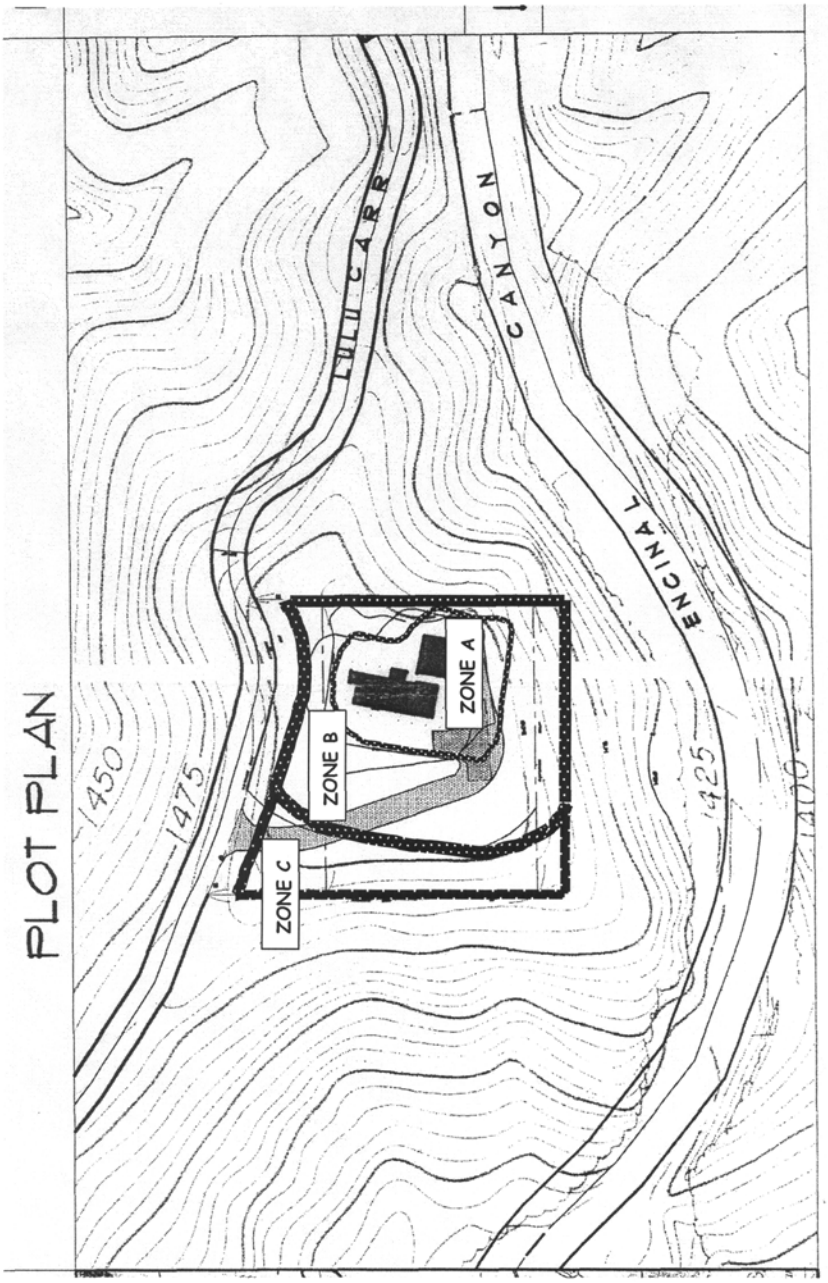

Exhibit 8
CDP No. 4-05-069
Fuel Modification Zones

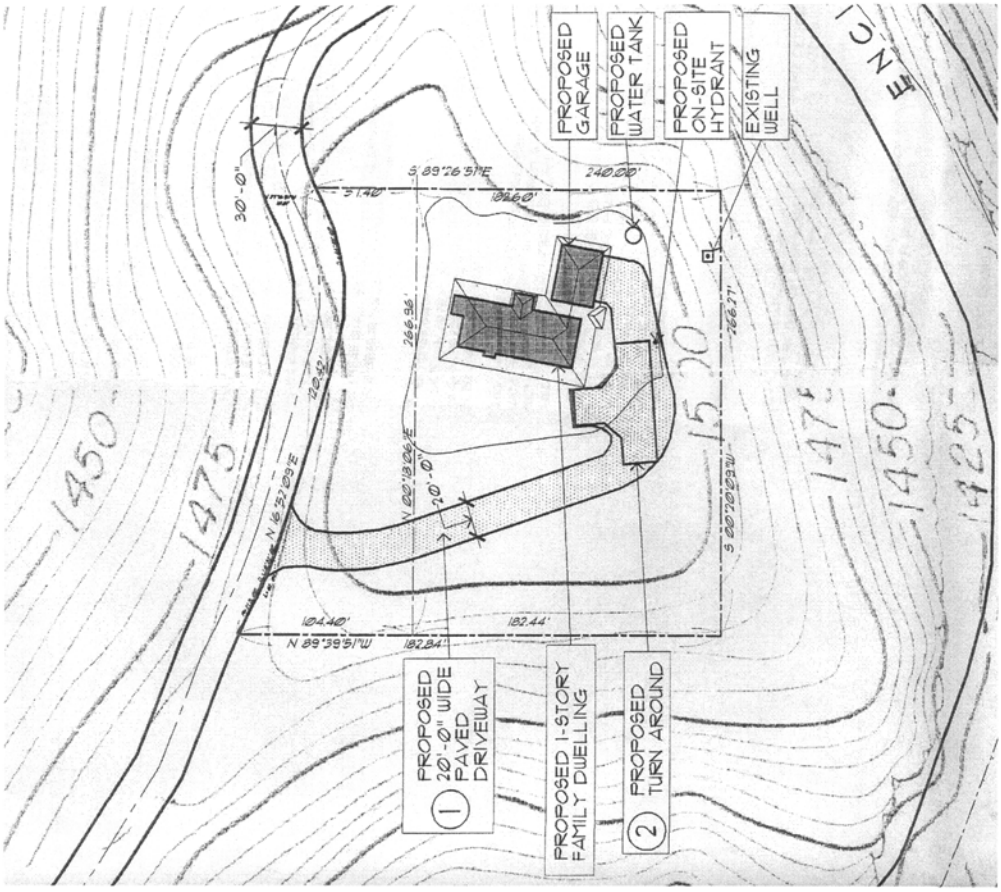

Exhibit 9
CDP No. 4-05-069
Well Location

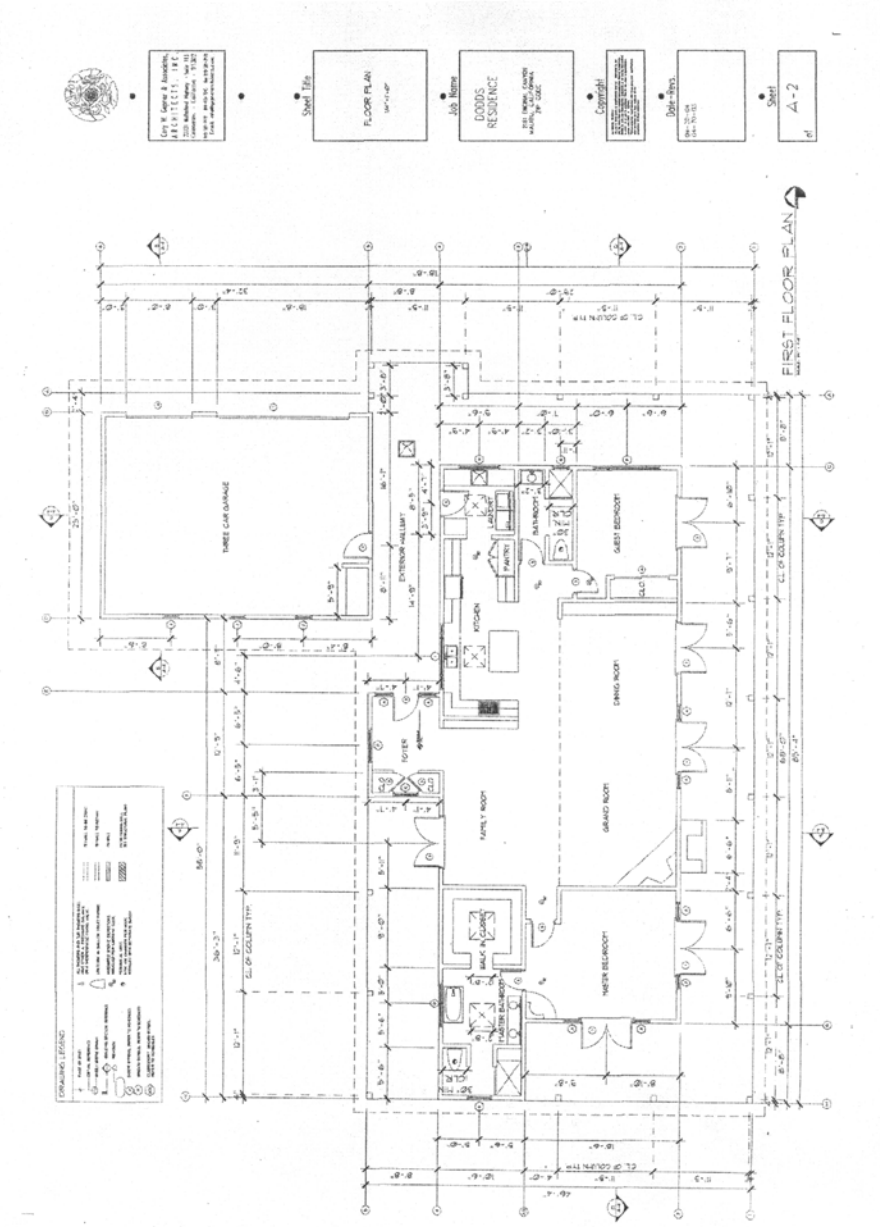

Exhibit 10
CDP No. 4-05-069
Floor Plans

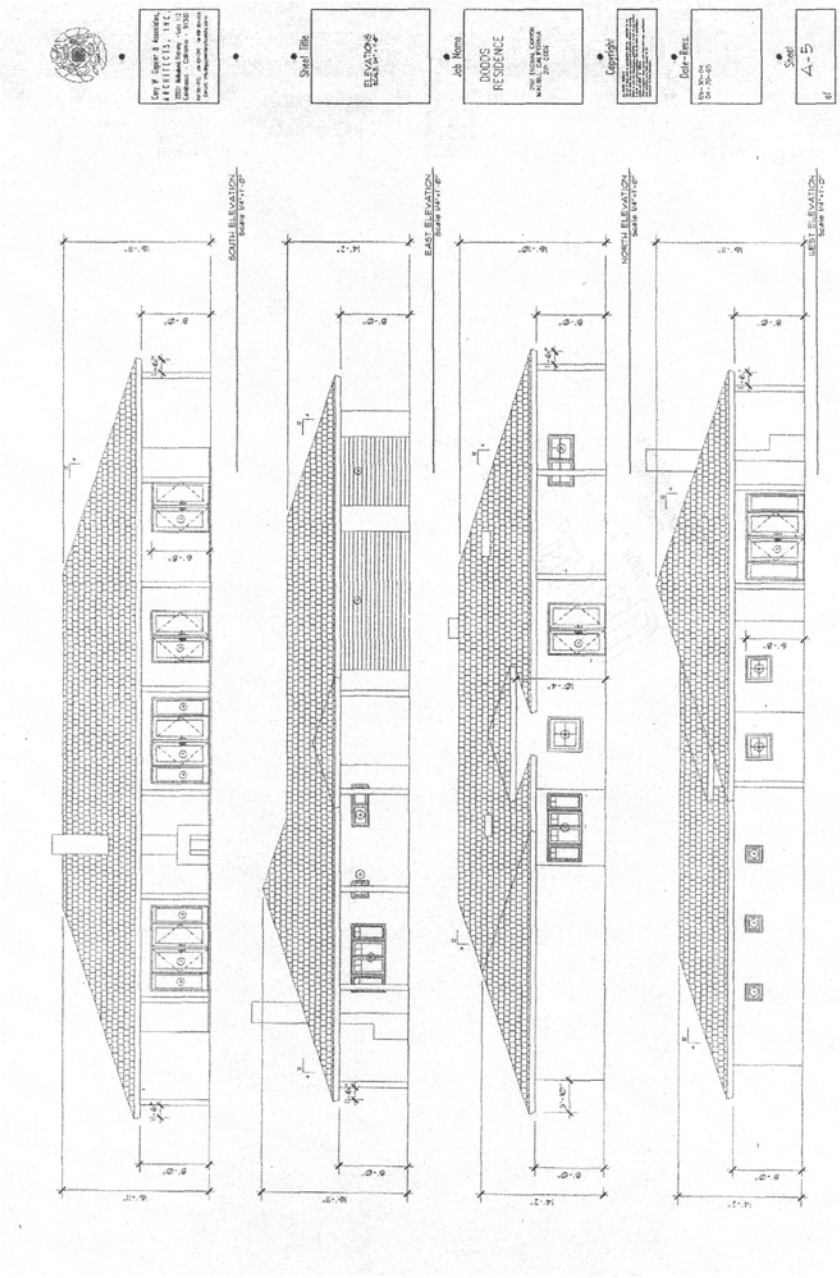

Exhibit 11
CDP No. 4-05-069
Elevations

2001

1986

1977

Exhibit 12
CDP No. 4-05-069
Comparative Aerial Photos
1977, 1986 and 2001

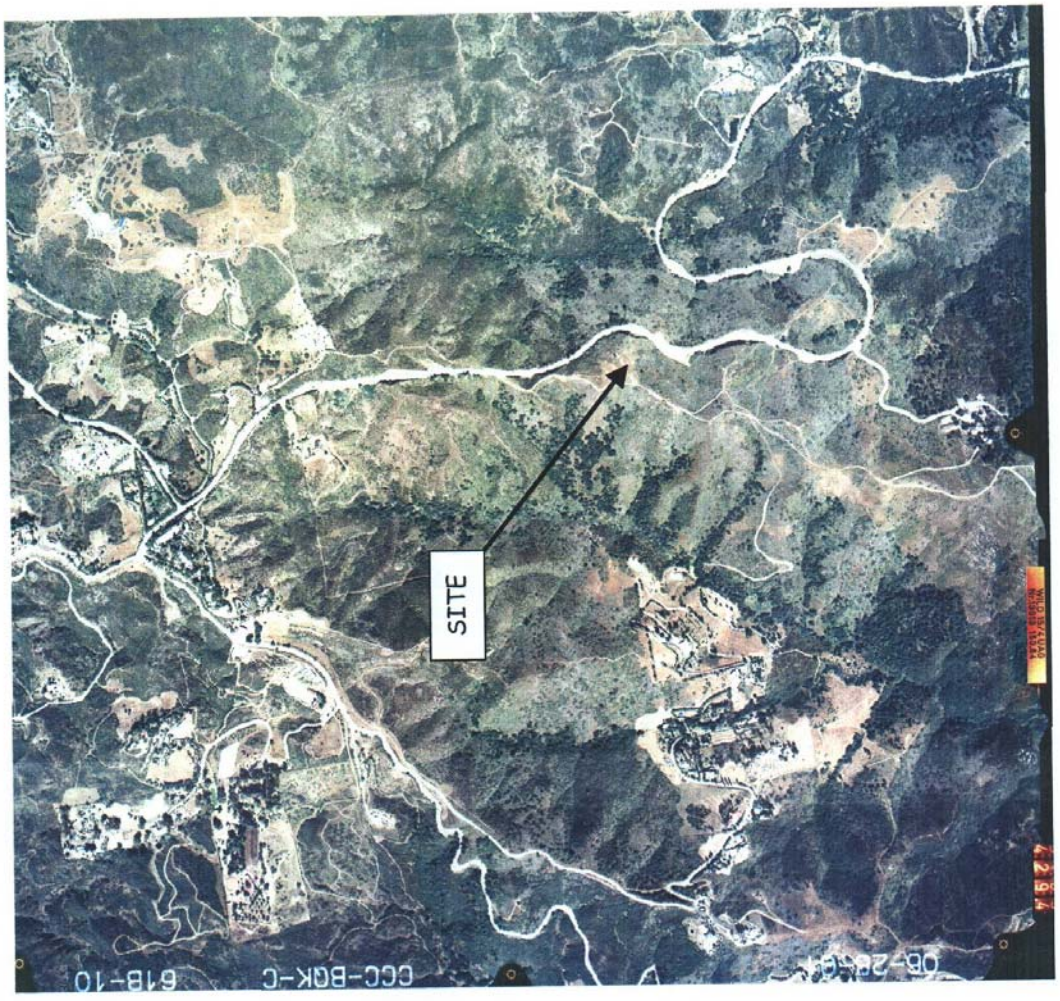

Exhibit 13
CDP No. 4-05-069
Aerial View

Photo 1. View of subject site from Encinal Canyon Road. View is to the north.

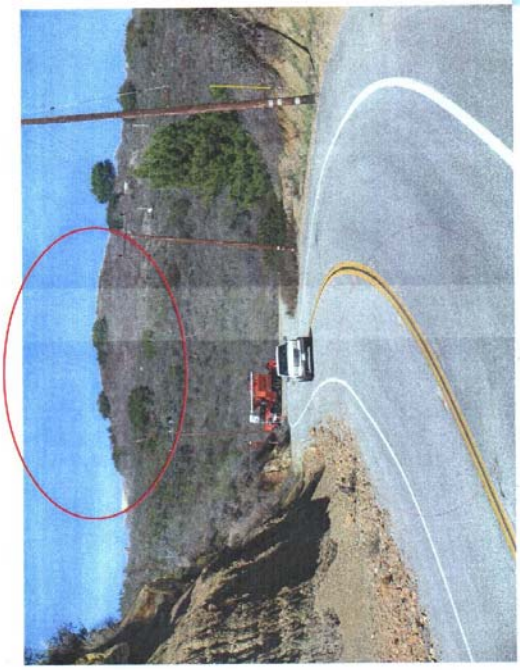

Photo 2. View of subject site from Encinal Canyon Road. View is to the south.

Exhibit 14
CDP No. 4-05-069
Site Photos